

Michelle M. Kretz
Assistant City Attorney



RECEIVED
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OPEN RECORDS DIVISION
Phone (817) 392-7600
Michelle.Kretz@fortworthtexas.gov

OR-500463-13
500463

September 16, 2013

Honorable Greg Abbott
Texas Attorney General
ATTN: Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Certified Mail No.: 7012 3460 0001 0032 0568

Re: City of Fort Worth Public Information Request Nos. W028510 and W28512 from Lance Conrad and W028619 from Susan Hutchinson
Requests for information related to the death of Jermaine Darden

Dear Attorney General Abbott:

On August 30, 2013 and September 3, 2013, the City of Fort Worth received three written requests for information related to the death of Jermaine Darden. On August 30, 2013, the City received two requests from Lance Conrad for video related to the incident and all documents related to the incident. On September 3, 2013, the City received a request from Susan Hutchinson for a copy of the file related to the incident.¹ Exhibit "A" contains a certification of the date the City received the requests. A copy of each request is included as Exhibit "B."

The basic information and court records will be released to the requestors at this time. However, the City believes that the remaining responsive records are excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Texas Government Code. Therefore, the City is seeking a ruling from your office in accordance with section 552.301 of the Texas Government Code. Exhibit "C" contains the information at issue.² The responsive information is provided on disc only.

¹ The City was closed on Monday, September 2, 2013 to observe the Labor Day holiday.

² The City has marked a social security number for redaction in accordance with section 552.147(b) of the Texas Government Code. Because this provision is intended to protect privacy, the City does not seek to withhold deceased persons' information or the requestor's information under this exception.

Pursuant to section 552.130(c), the City has redacted certain motor vehicle record information relating to living individuals other than the requestor described by subsections (a)(1) and/or (3). Because this provision is intended to protect privacy, the City does not seek to withhold deceased persons' information or the requestor's information under these exceptions.



1964 • 1993 • 2011

OFFICE OF THE CITY ATTORNEY

The City of Fort Worth ★ 1000 Throckmorton Street ★ 3rd Floor ★ Fort Worth, Texas 76102

817-392-7600 ★ Fax 817-392-8359

Honorable Greg Abbott
CFW PIR No. W028510 Conrad, L.,
W028512 Conrad, L., and W028619 Hutchinson, S.
September 16, 2013
Page 2 of 7

Release of the records would interfere with a pending criminal proceeding.

The City asserts that the submitted records may be withheld under section 552.108(a)(1) of the Texas Government Code. This section provides:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:
 - (1) release of the information would interfere with the detection, investigation or prosecution of crime[.]

TEX. GOV'T CODE ANN. § 552.108(a)(1) (West Supp. 2006).

The information at issue pertains to the arrest of one or more individuals that resulted in criminal prosecution currently pending with the Tarrant County District Attorney's Office. Exhibit "D" contains an affidavit from the Chief of the Misdemeanor Division of the District Attorney's Office who represents that release of the requested information at this time would interfere with pending law enforcement activities.

Because the City believes release of the submitted records would interfere with the detection, investigation, or prosecution of crime, the City requests a ruling from your office concluding that the City may withhold the requested information under section 552.108(a)(1). *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Records of cases not prosecuted are excluded from required public disclosure.

The City asserts that the requested records may be withheld under section 552.108(a)(2) of the Texas Government Code. This section provides:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:
 - (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

TEX. GOV'T CODE ANN. § 552.108(a)(2) (West Supp. 2006).

The submitted records pertain to a criminal investigation by the Fort Worth Police Department. This investigation did not result in prosecution. Because the submitted information deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication, the City asserts that these records may be withheld under section 552.108(a)(2).

The responsive information pertains to anticipated litigation.

Section 552.103 of the Texas Government Code provides in part:

- (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

- (c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Tex. Gov't Code Ann. § 552.103(a), (c) (West Supp. 2006).

Your office has repeatedly held that a governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. The courts have determined that the test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the governmental body receives the request for information, and (2) the information at issue is related to that litigation. *Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App.—Austin 2002, no pet.); *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both parts of the test for information to be excepted under section 552.103(a).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). Your office has held that to establish that litigation is reasonably anticipated, a governmental body must provide your office with “concrete evidence showing that the claim that litigation may ensue is more than mere

conjecture.” Open Records Decision No. 452 at 4 (1986). When the governmental body is the prospective plaintiff in litigation, the evidence of anticipated litigation must at least reflect that litigation involving a specific matter is “realistically contemplated.” *See* Open Records Decision No. 518 at 5 (1989); *see also* Attorney General Opinion MW-575 (1982) (investigatory file may be withheld if governmental body's attorney determines that it should be withheld pursuant to Texas Government Code § 552.103 and that litigation is “reasonably likely to result”).

In this instance, the requestors seek records that relate to an anticipated claim and suit. The records requested detail the execution of a search warrant at 3232 Thannisch Avenue and the subsequent death of Jermaine Darden. One of the requestors, Ms. Hutchinson, is an attorney who represents the family of the deceased. Ms. Hutchinson believes that the City, through the acts of the Fort Worth Police Department, is liable for the wrongful death of Mr. Darden. She has indicated that she is preparing to file suit. Ms. Hutchinson's request states that “[w]e will be filing suit and need, in particular, the names of the participating officers.” Her request was sent via email to a member of the Fort Worth City Attorney's Office litigation team with a subject line of “Darden v. Fort Worth.” It should also be noted that Ms. Hutchinson's client gave an interview to the local ABC news affiliate where she denied the findings of the medical examiner and indicated that she intended to sue.³

The records sought consist of reports, video, audio, and photographs related to the death of Jermaine Darden. The City contends that the records attached as Exhibit “C” are related to the anticipated litigation for purposes of section 552.103(a). Because the City has demonstrated that litigation was reasonably anticipated on the date this request was received, and has explained how the information at issue relates to the anticipated litigation, the City asserts that the requested records submitted as Exhibit “C” may be withheld pursuant to section 552.103 until such time as litigation is no longer anticipated.

Medical Examiner's reports are excepted from disclosure.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This encompasses section 11 of article 49.25 of the Code of Criminal Procedure, which provides:

The medical examiner shall keep full and complete records properly indexed, giving the name of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. The full report and detailed findings of the autopsy, if any, shall be a part of the record. Copies of all records shall promptly be delivered to the proper district, county, or criminal district

³ Full video of the interview is available at <http://www.wfaa.com/news/crime/Mom--221853691.html>.

attorney in any case where further investigation is advisable. The records may not be withheld, subject to discretionary exceptions under Chapter 552, Government Code...

Tex. Code of Crim. Proc Art. 49.25, § 11 (West 2013).

The bill analysis for SB 457 (codified Article 49.25) indicates that the change “[p]rohibits records kept by the medical examiner related to the death of certain individuals from being withheld, subject to discretionary exception under Chapter 552 (Public Information), Government Code, rather than providing that the records are subject to required disclosure in accordance with Chapter 552, Government Code...” Senate Research Center, Bill Analysis, Tex. S.B. 457, 83rd Leg., RS (2013). The City believes that the bill analysis and amended text of Article 49.25 make the submitted report subject to discretionary exceptions.

In this instance, the submitted Medical Examiner’s Report is subject to multiple discretionary exceptions. In accordance with the plain meaning of the statute as codified, the City believes that the records may be subject to exception under Article 49.25 and should be withheld under Government Code Section 552.101.

Criminal history record information is confidential and may not be released.

Section 552.101 of the Texas Government Code excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses laws that make criminal history record information (“CHRI”) confidential. Section 411.082(2) of the Texas Government Code defines CHRI as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.”

Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”), (2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). Although a criminal justice agency may obtain CHRI from the Texas Department of Public Safety (“DPS”) or from another criminal justice agency, *see* TEX. GOV’T CODE ANN. §§ 411.083(b)(1), .087(a)(2), .089(a) (West 2005), CHRI so obtained is confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies).

Honorable Greg Abbott
CFW PIR No. W028510 Conrad, L.,
W028512 Conrad, L., and W028619 Hutchinson, S.
September 16, 2013
Page 6 of 7

To the extent the requested information reflects the existence or nonexistence of CHRI, the City contends it must withhold such information under section 552.101 in conjunction with state and federal regulations.

Medical record information may not be released.

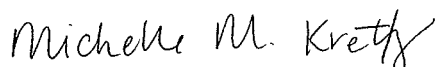
The submitted documents include medical records that the City contends may not be released. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by other statutes. Your office has held that access to medical records is governed by the Medical Practice Act (the "MPA"), TEX. OCC. CODE §§ 151.001-165.160 (West 2004 & Supp. 2006). Section 159.002 of the MPA provides in part:

- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

TEX. OCC. CODE § 159.002(b), (c) (West Supp. 2006).

The City has marked information that relates to the identity, diagnosis, evaluation, or treatment of an individual by specified physicians during office visits or by physicians and ancillary staff during the course a hospital stay and outpatient treatment. Your office has held that such documents constitute protected medical records because hospital treatment is routinely conducted under the supervision of physicians. *See* Open Decision Nos. 598 (1991), 546 (1990). The requestor has not provided the City with a written release for these records that complies with the requirements of section 159.005 of the MPA. Therefore the City believes it must withhold the marked information pursuant to section 552.101 in conjunction with the MPA.

Respectfully submitted,



Michelle M. Kretz
Assistant City Attorney

Honorable Greg Abbott
CFW PIR No. W028510 Conrad, L.,
W028512 Conrad, L., and W028619 Hutchinson, S.
September 16, 2013
Page 7 of 7

Enclosures

Cc w/o enclosures: Lance Conrad
WFAA TV News
2821 West 7th Street, Suite 220
Fort Worth, Texas 76107

via Electronic Mail:

Susan Hutchison
Attorney at Law
Hutchison, Lewis & Dauphinot, PC
611 S. Main Street, Suite 700
Grapevine, Texas 76034

via Electronic Mail:

Michelle M. Kretz
Assistant City Attorney



Phone (817) 392-7600
Michelle.Kretz@FortWorthTexas.gov

September 16, 2013

Honorable Greg Abbott
Texas Attorney General
ATTN: Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Dear Attorney General Abbott:

This is to certify that on August 30, 2013 and September 3, 2013, the City of Fort Worth received three written requests for information related to the death of Jermaine Darden. On August 30, 2013, the City received two requests from Lance Conrad for video related to the incident and all documents related to the incident. On September 3, 2013, the City received a request from Susan Hutchinson for a copy of the file related to the incident.¹

Michelle M. Kretz

Michelle M. Kretz
Assistant City Attorney

¹ The City was closed on Monday, September 2, 2013 to observe the Labor Day holiday.



OFFICE OF THE CITY ATTORNEY

The City of Fort Worth ★ 1000 Throckmorton Street ★ 3rd Floor ★ Fort Worth, Texas 76102
817-392-7600 ★ Fax 817-392-8359

Exhibit B
W028510 Conrad, L.
W028512 Conrad, L.
W028619 Hutchinson, S.

City of Fort Worth
Public Information Request
(web form)

Date: 8/30/2013 1:10:03 PM

Request Number: W028510-083013

Due Date: 9/16/2013

REQUESTOR IDENTIFICATION:

Name: Lance Conrad
Company Name: WFAA TV News
Address: 2821 West 7th Street, Suite 220
Fort Worth, TX 76107
Telephone: 817-347-5105
Email:

REQUEST DETAILS:

Category of Records Requested: Police Records

Description of Records Requested:

We would like to request all documents with the Jermaine Darden case.

Consent to Exclusions or Redactions:

The City is prohibited from releasing some types of information. In an effort to expedite your request, please check the box if you agree to exclude or redact from the requested records all of the information found in these exclusion categories. [Click here to see complete list of all exemptions](#)

I Agree: Yes

Delivery Method Preferred: Electronic by Email

City of Fort Worth
Public Information Request
(web form)

Date: 8/30/2013 1:30:30 PM

Request Number: W028512-083013

Due Date: 9/16/2013

REQUESTOR IDENTIFICATION:

Name: Lance Conrad
Company Name: WFAA TV News
Address: 2821 West 7th Street, Suite 220
Fort Worth, TX 76107
Telephone: 817-347-5105
Email:

REQUEST DETAILS:

Category of Records Requested: Police Records

Description of Records Requested:

We would like to request the video of the arrest of Jermaine Darden on May 16, 2013.

Consent to Exclusions or Redactions:

The City is prohibited from releasing some types of information. In an effort to expedite your request, please check the box if you agree to exclude or redact from the requested records all of the information found in these exclusion categories. [Click here to see complete list of all exemptions](#)

I Agree: No

Delivery Method Preferred: Electronic by Email

Public Information

From: Public Information
Subject: FW: Darden v. Fort Worth

From: Susan Hutchison
Sent: Saturday, August 31, 2013 9:39 AM
To: Brown, Laetitia
Subject: Darden v. Fort Worth

Laetitia,

It seems that the autopsy report is completed and I am in the process of obtaining the complete report. The copy obtained by the media rules the death due to heart disease with application of restraint. Please let me know as soon as possible the status of the investigation and, if it is complete, whether I can obtain a copy of the file, including audio and video. We will be filing suit and need, in particular, the names of the participating officers. Thanks,

Susan Hutchison

Hutchison, Lewis & Dauphinot, PC
611 S. Main Street
Suite 700
Grapevine, Texas 76034
817-336-5533
Fax 817-336-9005
warriorsforjustice.com

--Always Believe That Something Wonderful is About to Happen

Susan Hutchison

Hutchison, Lewis & Dauphinot, PC
611 S. Main Street
Suite 700
Grapevine, Texas 76034

817-336-5533
Fax 817-336-9005
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AFFIDAVIT OF RICHARD ALPERT

Exhibit D
W028510 Conrad, L.
W028512 Conrad, L.
W028619 Hutchinson, S.

STATE OF TEXAS }
 }
COUNTY OF TARRANT }

BEFORE ME, the undersigned authority, on this day personally appeared RICHARD ALPERT, who, by me having been first duly sworn, did upon his oath state as follows:

"My name is Richard Alpert. I am more than twenty-one years old and I am competent to make this affidavit. I have personal knowledge of these facts and each is true:

I am the Chief of the Misdemeanor Division of the Tarrant County District Attorney's Office. It is my understanding that the Fort Worth Police Department has received a public information request seeking information concerning:

Case No. 1326989
State of Texas v. Hunter Rutledge
County Criminal Court No. 3, Tarrant County, Texas
Offense: "POSS MARIHUANA U/2"
Next Court Date: 09/18/2013

PENDING CRIMINAL CASE with Tarrant County District Attorney's Office:

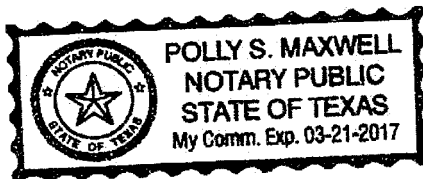
The criminal case referenced above is pending. See *Criminal Case Display* attached hereto as Att. 1. The information sought by the Requestor directly relates to this Office's preparation and prosecution of the case against the Defendant. Because the case has not yet gone to trial or been disposed of via a plea agreement, this Office believes the release of the information sought would unduly interfere with the pending investigation and prosecution of the Defendant. Therefore, I have determined that the information sought made the basis of the request should be withheld from the public at this time.

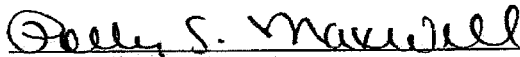
Further, affiant sayeth not."



RICHARD ALPERT

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, by RICHARD ALPERT, on the 6th day of September, 2013.





NOTARY PUBLIC, In and For the
State of T E X A S

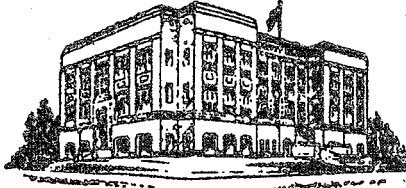
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DOCK 1326989
NAME RUTLEDGE,HUNTER DOB AGE 22 RACE W E N SEX M
ADDR 311 S INDUSTRIAL BLVD APT 107 EULESS TX 76040
BOOKING NO 3178650 TRN 9133660034 TRS A001 APPL DATE CODP? N
FILING AGENCY 12 FORT WORTH PD FILE DATE 05/17/13 RPT# 13047899
CHRG OFFN 356211 POSS MARIHUANA U/2 OFFN DATE 05/16/13
DISP OFFN INDICTED NEXT CT 09/18/13
09:00 PT
DEF ATTY ROBINSON,ROXANNE MC APPOINTED Y ADD'L ATTYS
REV ATTY VALVERDE,ALFREDO DRWR VOL/PAGE
PROSECTR MARTIN,NATHAN NXT PRELIM CT
JP VOL/PAGE
BOND STATUS ISSD EVENT REC AMT 500.00 ACT 500.00
BONDSMAN JOHNSON,DANNY PEND
SENT PROB APPEAL TOT FINE .00 PAID
DISP ACTN COMPN 1326988
DISP ACTN CASES
DISP ACTN REMARK

Wesley N. Hinch
County Attorney

Jerry Andress
Asst. Co. Atty

Matthew Minick
Asst. Co. Atty.

Kathrine McCarty
Asst. Co. Atty.

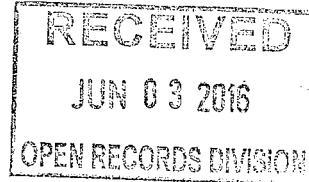


THE COUNTY OF LIBERTY

Office of the County Attorney

June 1, 2016

OR-6 21885-16
6 21885



P.O. Box 9127
Liberty, Texas 77575
Voice
(936) 336-4650
Facsimile
(936) 336-4568

The Honorable Ken Paxton
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

ATTN: Open Records Division

RE: Public Information Request
Governmental Body - Liberty County Attorney's Office
Requestor - Diana Claitor, Texas Jail Project
Date of Request - May 11, 2016
Date Request Received - May 17, 2016

Dear General Paxton:

The Liberty County Attorney's Office serves as legal counsel for Liberty County, Texas. We respectfully submit this request on behalf of the Liberty County Sheriff's Office ("LCSO") for an opinion from the Texas Attorney General concerning the LCSO's authority and obligation to withhold certain requested information from disclosure.

The attached request was submitted pursuant to Chapter 552 of the Texas Government Code, commonly known as the Texas Public Information Act. A copy of the request for information ("Request") is attached hereto as Exhibit A.

The Requestor seeks a copy of the autopsy report, death investigation reports, and any related incident reports for the suicide death of inmate, Noe Santos, Jr., on July 30, 2010 in the Liberty County Jail.

For the reasons set forth below, this Office is redacting and/or withholding certain portions of the requested information, subject to your ruling.

Timeline of the Request and this Request for Opinion

Request for Attorney General's Opinion submitted within ten (10) business days:

This Request was received on May 17, 2016 by the LCSO. Liberty County was closed for the Memorial Day holiday on Monday, May 30, 2016. Therefore this Request for an Opinion is timely, having been submitted to you within ten (10) business days.

Background

The request is self-explanatory, seeking records pertaining to the death of a federal inmate housed in the Liberty County Jail on July 30, 2010. Federal inmate, Noe Santos, Jr., was discovered hanging in his single cell unit in the B dormitory by fellow inmates. Emergency procedures were commenced and Santos was transported to the Liberty Dayton Medical Center where he was pronounced deceased. After an investigation, law enforcement ruled this case to be a suicide. This criminal investigation is currently closed. The Requestor seeks a copy of all materials related to the investigation in this case. A copy of the investigation materials is attached hereto as Exhibit B.

Basis for Non-Disclosure

Liberty County asserts that section 552.108(a)(2) of the Government Code excepts from required public disclosure "information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication." This exception applies to records pertaining to criminal investigations that have concluded and did not result in a conviction or deferred adjudication. In this instance, the criminal investigation into the death of Noe Santos, Jr., was closed, as the death was ultimately ruled a suicide. The case was never submitted for prosecution. Thus, the investigation did not and will not result in a conviction or deferred adjudication. Captain Don Neyland with the LCSO and lead investigator in this case has confirmed that the status of the investigation has not changed and remains closed. A copy of the correspondence with Captain Neyland is attached hereto as Exhibit C.

Further, Liberty County asserts that the records sought should be redacted to prevent the disclosure of information protected by law. Specifically, the records requested include social security numbers, which are excepted from disclosure under section 552.147(a) of the Government Code; and drivers license numbers, which are excepted from disclosure under section 552.130(a)(1) of the Government Code. Consequently, should the Attorney General determine that the subject records are not excepted from disclosure for the reasons articulated above, Liberty County seeks authorization to redact all social security numbers and drivers license numbers from the subject records.

Conclusion

The Request at issue seeks information that is specifically excepted from disclosure. For the reasons cited above, Liberty County seeks confirmation from the Attorney General that the information has been properly withheld.

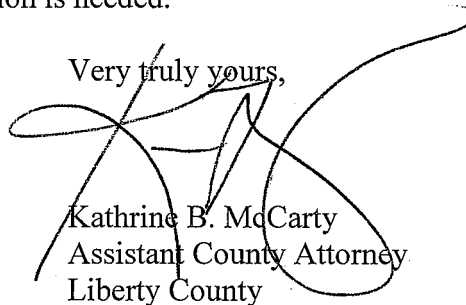
This Office is providing to the Requestor, contemporaneously with the submission of this Request for Opinion, a true and correct copy of this letter as well as notification that the requested information is being withheld pending a decision from the Attorney General as to the issues raised herein. Please note that recording Liberty County believes to be exempt from disclosure is being withheld pending a ruling by the Attorney General.

Pursuant to §552.301(e) of the Government Code, enclosed please find:

1. Exhibit A - Copy of Public Information Request from Texas Jail Project;
2. Exhibit B - Copy of the PIA Requested Records;
3. Exhibit C – Copy of correspondence with Liberty County Sheriff's Office; and
4. Exhibit D - Copy of Notice to Requestor of withheld information and a request for an Attorney General's Open Records Decision.

Thank you for your assistance with this matter and please do not hesitate to contact the under-signed if any additional information is needed.

Very truly yours,



Kathrine B. McCarty
Assistant County Attorney
Liberty County

KBM/jlb

Via Certified Mail, Return Receipt Requested, No. 7009 2820 0001 5398 9948

Enclosures

Cc: Mr. Diana Claitor
Texas Jail Project
1009 E. 11th St.
Austin, Texas 78702



TEXAS JAIL PROJECT

www.texasjailproject.org

We listen, inform, and advocate... to improve county jails.

May 11, 2016

Open Records Section
Texas Commission on Jail Standards
P.O. Box 12985
Austin, Texas 78711-2985
Via fax: (512) 463-3185

Re: Texas Public Information Act Request

Dear Madam or Sir:

I write to request information from the Texas Commission on Jail Standards (TCJS) pursuant to the Texas Public Information Act, Chapter 552 of the Texas Government Code. I request the following public information, recorded in any medium, in the possession or control of TCJS:

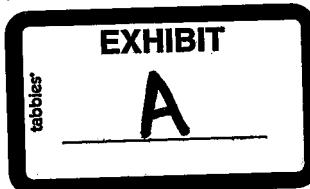
1. Autopsies, death investigation reports, and any related incident reports for the following people. Indicated are the county in whose jail the decedent passed away, and the date of death (DOD) (MM/DD/YY or MM/YYYY):

- a. Terry Borum, Swisher County, DOD: 02/03/13
- b. Lacy Cuccaro, Hansford County, DOD: 07/19/12
- c. Eugene Etheridge, Ft. Bend County, DOD: 11/03/15
- d. Danarian Hawkins, Harris County, DOD: 02/05/14
- e. Jesse Jacobs, Galveston County, DOD: 03/2015
- f. Bobby Madewell, Jr., Gregg County, DOD: 03/21/13
- g. Brandon Mayo, Orange County, DOD: 06/17/15

~~h. Steven Nelson, Tarrant County, DOD: 03/19/12~~ *response no documents*

i. Noe Santos, Jr., Liberty County, DOD: 05/2010

The Texas Public Information Act requires that you make a good-faith effort to relate these requests to any information that you hold. Open Records Dec. No. 561 at 8 (1990). The Act also requires you to promptly produce the requested information unless, within ten days, you have sought an Attorney General's Opinion. If you expect a significant delay in responding to this request, please inform me when I can expect copies of these records.

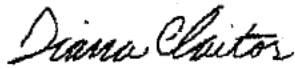


Please waive the fees for this request, as it is made for public and non-commercial purposes. Tex. Gov't Code § 552.267. If you are unable to waive the fee and it will be over \$25.00, please contact Ranjana Natarajan at (512) 232-7222 or before fulfilling the request. The Texas Jail Project is a nonprofit organization with the mission of improving conditions for people incarcerated in Texas county jails. The Civil Rights Clinic is an experiential learning program at UT School of Law, in which law students engage in public interest advocacy and lawyering to assist needy clients and communities. We request this information primarily for the benefit of the general public. Paying for copies would be a significant expenditure of our modest resources.

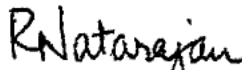
If you deny any or all part of this request, please cite each specific exemption that you claim justifies your denial and notify me of the appellate procedures available under the law.

Please send your response to the University of Texas Civil Rights Clinic, 727 E. Dean Keeton Street, Austin, Texas 78705, or Thank you for considering this request.

Sincerely,



Diana Claitor
Texas Jail Project
1009 E. 11th St.
Austin, Texas 78702
info@texasjailsproject.org
(512) 469-7665



Ranjana Natarajan
University of Texas School of Law
Civil Rights Clinic
727 E. Dean Keeton St.
Austin, Texas 78705

(512) 232-7222

Kathrine McCarty

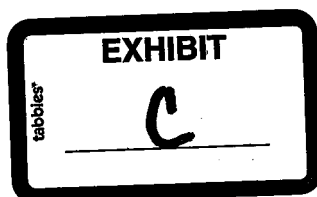
From: "Don Neyland" <don.neyland@co.liberty.tx.us>
To: "Kathrine McCarty" <kathrine.mccarty@co.liberty.tx.us>
Sent: Tuesday, May 31, 2016 3:33 PM
Subject: Noe Santos Death

Kathrine McCarty,

It is my understanding that there is no status change in the death investigation of Noe Santos at the Liberty County Jail. It is also my understanding that there is civil litigation pending concerning Mr. Santo's death. It is my belief that any release of information at this time would be detrimental to future proceedings.

Thank You,

Don Neyland
Liberty County Sheriff's Office
2400 Beaumont Avenue
Liberty, Texas 77575
936-336-4510 (desk)
936-336-4536 (fax)
don.neyland@co.liberty.tx.us



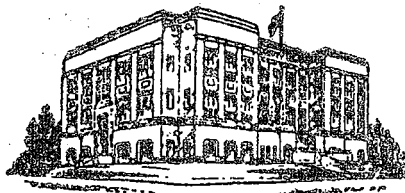
5/31/2016

Wesley N. Hinch
County Attorney

Jerry Andress
Asst. Co. Atty

Matthew Minick
Asst. Co. Atty.

Kathrine McCarty
Asst. Co. Atty.



P.O. Box 9127
Liberty, Texas 77575
Voice
(936) 336-4650
Facsimile
(936) 336-4568

THE COUNTY OF LIBERTY

Office of the County Attorney

June 1, 2016

Ms. Diana Claitor
Texas Jail Project
1009 E. 11th St.
Austin, Texas 78702

Via CMRRR No: 7009 2820 0001 5398 9931

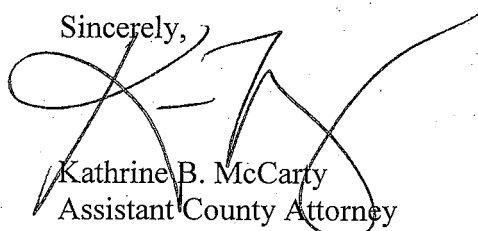
Re: Request for Public Information Pertaining to Death of Noe Santos, Jr.

Dear Ms. Claitor,

We have received your public information request for records related to the death of Noe Santos, Jr., dated May 11, 2016. As reflected in the attached correspondence to the Texas Attorney General, our office believes that the requested documents are excepted from disclosure and has asked the Attorney General for a ruling. Until the Liberty County Attorney's Office receives a ruling, the information requested is being withheld.

You have the right to appeal our decision to withhold this information from you. Instructions for appeal are at the end of this letter. If you do not want to appeal, you do not need to do anything else. Please note that we are withholding all of the records requested. We will process the rest of your request for the information in accordance with the terms of the requested ruling when it is made available.

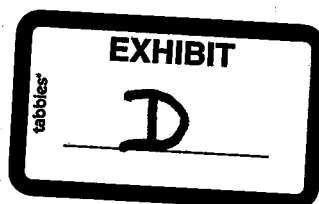
Sincerely,



Kathrine B. McCarty
Assistant County Attorney
Liberty County

KBM/jlb

Enclosure





RECEIVED

APR 19 2013

OPEN RECORDS DIVISION

CITY OF HOUSTON

Houston Police Department

Annise D. Parker, Mayor

1200 Travis Houston, Texas 77002-6000 713/308-1600

CITY COUNCIL MEMBERS: Helena Brown Jerry Davis Ellen R. Cohen Wanda Adams Mike Sullivan Al Hoang Oliver Pennington Edward Gonzalez James G. Rodriguez
Mike Laster Larry V. Green Stephen C. Costello Andrew C. Burks, Jr. Melissa Noriega C. O. "Brad" Bradford Jack Christie CITY CONTROLLER: Ronald C. Green

April 17, 2013

Charles A. McClelland, Jr.
Chief of Police



The Honorable Greg Abbott
Texas Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

OR-491209 -13
491209

Attention: Open Records Division

Re: **OR2013-05313 (ID# 483256; ORU No. 13-0310)**

Dear General Abbott:

The Houston Police Department (the "department") received a letter ruling from your office dated April 3, 2013 (*See Exhibit A*). In the ruling, you provide that "the department has not submitted to [your] office general written comments stating the reasons why the claimed exceptions apply to the requested information or a copy or a representative sample of the specific information requested." Consequently, your office held that the "department has failed to comply with the requirements of section 552.301(e) of the Government Code" and must release the requested information.

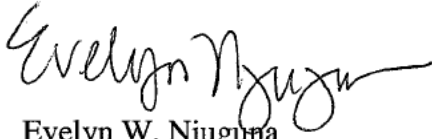
Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to your office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Tex. Gov't Code §552.301(e). The department's fifteen business-day deadline under section 552.301(e) was February 6, 2013.

The department avers that it mailed to your office on February 6, 2013 (*See Exhibit B*) the responsive information as well as written comments stating the reasons why the claimed exceptions apply to the responsive information (*See Exhibit C*). The department believes the responsive information is excepted from disclosure pursuant to section 552.108 of the Government Code, as argued in **Exhibit C**.



The department respectfully requests a ruling on this matter. Please do not hesitate to contact me at 713-308-1660 if you need additional information. Please include **ORU No. 13-0301** in any future correspondence concerning this request.

Sincerely,



Evelyn W. Njuguna
HPD Staff Attorney

EWN/jz

Enclosures

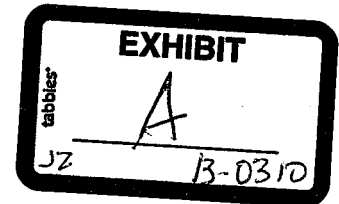
cc: Lindsey Moreno, Paralegal
Adame & Associates
1322 Yale Street
Houston, Texas 77008
Send via e-mail:
(w/o Exhibits)



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 3, 2013

Ms. Evelyn W. Njuguna
Staff Attorney
City of Houston Police Department
1200 Travis
Houston, Texas 77002-6000



OR2013-05313

Dear Ms. Njuguna:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 483256 (ORU No. 13-0310).

The Houston Police Department (the "department") received a request for information pertaining to a specified incident. You claim the requested information is excepted from disclosure under sections 552.101 through 552.153 of the Government Code. We have considered the exceptions you claim.

We must address the department's procedural obligations under the Act for the requested information. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body that receives a request for information it wishes to withhold under the Act is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See Gov't Code* § 552.301(e). In this instance, the department received the request for information on January 15, 2013. Accordingly, the department's fifteen-business-day deadline was February 6, 2013. As of the date of this letter, the department has not submitted to this office general written comments stating the reasons why the claimed exceptions apply to the requested information or a copy or a representative sample of the specific information

requested. Accordingly, we find the department has failed to comply with the requirements of section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information at issue is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because the department has failed to comply with the requirements of the Act, it has waived all of its claimed discretionary exceptions to disclosure. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Furthermore, because you have not submitted a copy or a representative sample of the specific information requested to this office for our review, we have no basis for finding the requested information is confidential under any mandatory exceptions. Thus, we have no choice but to order the department to release the requested information in accordance with section 552.302 of the Government Code. If you believe this information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 483256

Enc. Submitted documents

c: Requestor

ATTORNEY GENERAL / U.S. MAIL LOG-IN SHEET

EXHIBIT

B

13-0310

DATE	TIME	OR#	REQUESTOR	ORU STAFF	SIGNATURE MAIL ROOM
1-29-13	1:10	13-0310	LINDSEY MORENO	J. Zapata	Shari Robertson
1-31-13	10:25a	13-0345	ROQUE JACQUEZ	J. Zapata	" "
1-31-13	2:15	13-0404	Eli Vasquez	J. Fontenelle	" "
1-31-13	2:15	13-0464	Kassandra Vega	" "	" "
2-1-13	9:00PM	13-0227	Frank Robertson	M. Ponce	" "
2-1-13	9:00AM	13-0512	Kevin Riley	M. Ponce	" "
2-1-13	2:45	13-0463	Diwanna Butler	J. Fontenelle	" "
2-1-13	"	13-0521	Breton Krcet	" "	" "
2-5-13	1:45PM	13-0029	AL REP. TANDAWILLCOX CAREY WELLMAN	JOE Zapata	Edgema
2-5-13	2:35p	13-0437	CHARLES WILSON	JOE Zapata	" "
2-6-13	10:45am	13-0456	BRIAN COLLISTER	MARIA PONCE	Shari Robertson
2-6-13	10:45am	13-0310	LINDSEY MORENO	JOE Zapata	" "



CITY OF HOUSTON

Houston Police Department

Annise D. Parker, Mayor

1200 Travis Houston, Texas 77002-6000 713/308-1600

CITY COUNCIL MEMBERS: Helena Brown Jerry Davis Ellen R. Cohen Wanda Adams Mike Sullivan Al Hoang Oliver Pennington Edward Gonzalez James G. Rodriguez
Mike Laster Larry V. Green Stephen C. Costello Andrew C. Burks, Jr. Melissa Noriega C. O. "Brad" Bradford Jack Christie CITY CONTROLLER: Ronald C. Green

February 6, 2013

Charles A. McClelland, Jr.
Chief of Police



The Honorable Greg Abbott
Texas Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

Attention: Open Records Division

Re: Public Information Act request received January 15, 2013 from Lindsey Moreno for a copy of the complete case file pertaining to HPD Incident Number 90010111 and No. 94119011-B; **ORU No. 13-0310; OAG ID# 483256**

Dear General Abbott:

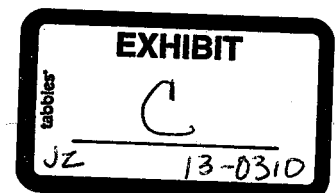
This is a follow-up to my letter dated January 29, 2013 (**Exhibit 1A**). The Houston Police Department ("HPD") received the above-referenced request on January 15, 2013 (**Exhibit 1**). **HPD notes that Monday, January 21, 2013, was observed as City Holiday.** By copy of this letter, HPD is informing the requestor that HPD believes responsive information (**Exhibit 2**) is excepted from public disclosure under section 552.108 of the Government Code.

Section 552.108 of the Government Code

Section 552.108 provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.



Gov't Code § 552.108(a)(2):

HPD advises that **Exhibit 2** pertains to a criminal investigation did not result in conviction or deferred adjudication. HPD advises that the investigation was concluded by a determination to close the case because there were no arrests due to the death of the defendant, (**See Exhibit 2, page 2.073 of the report**). Therefore, HPD believes the investigation in **Exhibit 2** should be excepted from public disclosure pursuant to section 552.108(a)(2) because it concluded in a result other than conviction or deferred adjudication.

HPD respectfully requests a ruling on this matter. Please do not hesitate to contact me at 713-308-1660 if you need additional information. Please include **ORU No. 13-0310** in any future correspondence concerning this request.

Sincerely,



Evelyn W. Njuguna
HPD Staff Attorney

EWN/jz

Enclosures

cc: Lindsey Moreno, Paralegal
Adame & Associates
1322 Yale Street
Houston, Texas 77008
Sent Via Electronic Mail:
(W/o Exhibits)



CITY OF HOUSTON

Houston Police Department

Annise D. Parker, Mayor

1200 Travis Houston, Texas 77002-6000 713/308-1600

CITY COUNCIL MEMBERS: Helena Brown Jerry Davis Ellen R. Cohen Wanda Adams Mike Sullivan Al Hoang Oliver Pennington Edward Gonzalez James G. Rodriguez
Mike Laster Larry V. Green Stephen C. Costello Andrew C. Burks, Jr. Melissa Noriega C. O. "Brad" Bradford Jack Christie CITY CONTROLLER: Ronald C. Green

January 29, 2013

Charles A. McClelland, Jr.
Chief of Police



The Honorable Greg Abbott
Texas Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

Attention: Open Records Division

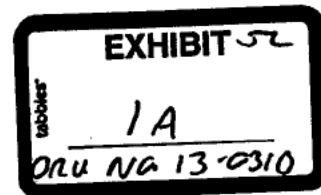
Re: Public Information Act request received January 15, 2013 from Lindsey Moreno for a copy of the complete case file pertaining to HPD Incident Number 90010111 and No. 94119011-B; **ORU No. 13-0310**

Dear General Abbott:

The Houston Police Department ("HPD") received the above-referenced request on January 14, 2013 (**Exhibit 1**). **HPD notes that Monday, January 21, 2013, was observed as City Holiday.** By copy of this letter, HPD is informing the requestor that the Department is seeking a decision from your office because HPD believes responsive information is excepted from public disclosure pursuant to sections 552.101 through 552.153 of the Government Code. We will forward responsive information and our legal arguments under separate cover shortly. Please include **ORU No. 13-0310** in any future correspondence concerning this request.

Sincerely,

Evelyn W. Njuguna
HPD Staff Attorney



EWN/jz

Enclosures

cc: Lindsey Moreno, Paralegal
Adame & Associates
1322 Yale Street
Houston, Texas 77008
Sent Via Electronic Mail:
(W/o Exhibits)



7210

HPD - Open Records

From: Lindsey Moreno
Sent: Tuesday, January 15, 2013 11:19 AM
To: HPD - Open Records
Cc: Johnny Garza
Subject: Estate of Edgar Antonio Ramirez : Open Records Request
Attachments: 2013.01.15 Ltr to HPD w open records request.pdf *JMC, 094119011*

Hello,

Please see the attached Open records request regarding Edgar Antonio Ramirez. DOB: 9/21/1989 Please advise if you should need any additional information.

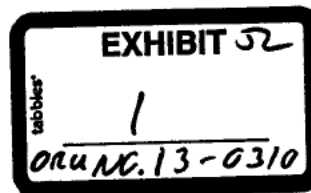
Thank you,

Lindsey Moreno
PARALEGAL TO JOHNNY N. GARZA, JR.



1322 Yale Street
Houston, Texas 77008
(713) 863-7100 Ph.
(713) 863-7133 Fax

www.adamelaw.com



This communication is solely for the person to whom it is addressed. It contains legally privileged and confidential information. If you are not the intended recipient, you may not forward, disclose, copy, print, or save the message or its attachments. If you have received this message in error, please notify me immediately, and please delete this message.



MIGUEL A. ADAME
ATTORNEY AT LAW

JOHNNY N. GARZA, JR.
ATTORNEY AT LAW

January 15, 2013

VIA FACSIMILE (713) 308-3260 AND
VIA E-MAIL HPD.OPENRECS@HOUSTONTX.GOV

Houston Police Department
901 Bagby
Houston, Texas 77002

Re: Name of Deceased : Edgar Antonio Ramirez
Date of Death : July 11, 2011
HPD Report No. : Unknown

To whom it may concern:

Our law firm represents the estate of Edgar Antonio Ramirez, who was killed in the above-noted incident. In order to complete my investigation, I would request that through the Texas Public Information/Open Records Act your office release all of the pertinent data regarding this accident, including by not limited to the following:

1. Complete copy of incident/offense report;
2. Complete list of witnesses;
3. Complete copy of all statements;
4. Complete copy of all videotapes of the incident, including the videos taken from the Timewise/Shell convenience store;
5. Complete color copies of all photographs;
6. Any accident reconstruction calculations;
7. Results of any alcohol or drug testing;
8. A copy of the driver's log book, if one was required;
9. If the truck task force was called to the scene, a complete copy of their reports; and
10. Any other pertinent information that your department holds in regards to this matter.

Please inform us of any fees for this service and I will remit payment promptly.

Very truly yours,
ADAME & ASSOCIATES, PLLC

Johnny N. Garza, Jr.

JNG/lm

1322 YALE STREET, HOUSTON, TEXAS 77008 ★ (713) 863-7100 OFFICE ★ (713) 863-7133 FAX

WWW.ADAMELAW.COM



RECEIVED

FEB 01 2013

OPEN RECORDS DIVISION

CITY OF HOUSTON

Houston Police Department

Annise D. Parker, Mayor

1200 Travis Houston, Texas 77002-6000 713/308-1600

CITY COUNCIL MEMBERS: Helena Brown Jerry Davis Ellen R. Cohen Wanda Adams Mike Sullivan Al Hoang Oliver Pennington Edward Gonzalez James G. Rodriguez
Mike Laster Larry V. Green Stephen C. Costello Andrew C. Burks, Jr. Melissa Noriega C. O. "Brad" Bradford Jack Christie CITY CONTROLLER: Ronald C. Green

January 29, 2013

The Honorable Greg Abbott
Texas Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

Charles A. McClelland, Jr.
Chief of Police



OR 483256-13
483256

Attention: Open Records Division

Re: Public Information Act request received January 15, 2013 from Lindsey Moreno for a copy of the complete case file pertaining to HPD Incident Number 90010111 and No. 94119011-B; **ORU No. 13-0310**

Dear General Abbott:

The Houston Police Department ("HPD") received the above-referenced request on January 14, 2013 (**Exhibit 1**). **HPD notes that Monday, January 21, 2013, was observed as City Holiday.** By copy of this letter, HPD is informing the requestor that the Department is seeking a decision from your office because HPD believes responsive information is excepted from public disclosure pursuant to sections 552.101 through 552.153 of the Government Code. We will forward responsive information and our legal arguments under separate cover shortly. Please include **ORU No. 13-0310** in any future correspondence concerning this request.

Sincerely,

Evelyn W. Njuguna
HPD Staff Attorney

EWN/jz

Enclosures

cc: Lindsey Moreno, Paralegal
Adame & Associates
1322 Yale Street
Houston, Texas 77008
Sent Via Electronic Mail:
(W/o Exhibits)



JZ/cw

HPD - Open Records

From: Lindsey Moreno
Sent: Tuesday, January 15, 2013 11:19 AM
To: HPD - Open Records
Cc: Johnny Garza
Subject: Estate of Edgar Antonio Ramirez : Open Records Request
Attachments: 2013.01.15 Ltr to HPD w open records request.pdf *Inc. 094119011*

Hello,

Please see the attached Open records request regarding Edgar Antonio Ramirez. DOB: 9/21/1989 Please advise if you should need any additional information.

Thank you,

Lindsey Moreno
PARALEGAL TO JOHNNY N. GARZA, JR.



1322 Yale Street
Houston, Texas 77008
(713) 863-7100 Ph.
(713) 863-7133 Fax

www.adamelaw.com



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MIGUEL A. ADAME
ATTORNEY AT LAW

JOHNNY N. GARZA, JR.
ATTORNEY AT LAW

January 15, 2013

VIA FACSIMILE (713) 308-3260 AND
VIA E-MAIL HPD.OPENRECS@HOUSTONTX.GOV

Houston Police Department
901 Bagby
Houston, Texas 77002

Re:	Name of Deceased	:	Edgar Antonio Ramirez
	Date of Death	:	July 11, 2011
	HPD Report No.	:	Unknown

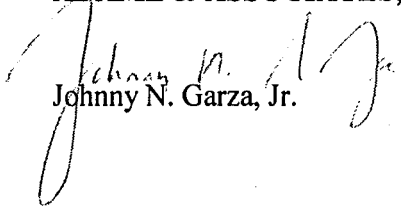
To whom it may concern:

Our law firm represents the estate of Edgar Antonio Ramirez, who was killed in the above-noted incident. In order to complete my investigation, I would request that through the Texas Public Information/Open Records Act your office release all of the pertinent data regarding this accident, including by not limited to the following:

1. Complete copy of incident/offense report;
2. Complete list of witnesses;
3. Complete copy of all statements;
4. Complete copy of all videotapes of the incident, including the videos taken from the Timewise/Shell convenience store;
5. Complete color copies of all photographs;
6. Any accident reconstruction calculations;
7. Results of any alcohol or drug testing;
8. A copy of the driver's log book, if one was required;
9. If the truck task force was called to the scene, a complete copy of their reports; and
10. Any other pertinent information that your department holds in regards to this matter.

Please inform us of any fees for this service and I will remit payment promptly.

Very truly yours,
ADAME & ASSOCIATES, PLLC


Johnny N. Garza, Jr.

JNG/lm

1322 YALE STREET, HOUSTON, TEXAS 77008 ★ (713) 863-7100 OFFICE ★ (713) 863-7133 FAX

WWW.ADAMELAW.COM



RECEIVED

JUN 14 2013

CITY OF HOUSTON

Houston Police Department

Annise D. Parker, Mayor

OPEN RECORDS DIVISION

1200 Travis Houston, Texas 77002-6000 713/308-1600

CITY COUNCIL MEMBERS: Helena Brown Jerry Davis Ellen R. Cohen Wanda Adams Mike Sullivan Al Hoang Oliver Pennington Edward Gonzalez James G. Rodriguez
Mike Laster Larry V. Green Stephen C. Costello Andrew C. Burks, Jr. Melissa Noriega C. O. "Brad" Bradford Jack Christie CITY CONTROLLER: Ronald C. Green

June 11, 2013

Charles A. McClelland, Jr.
Chief of Police



The Honorable Greg Abbott
Texas Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

OR-496349-13
496749

Attention: Open Records Division

Re: Public Information Act request received May 23, 2013 from Gene S. Hagood for copies of nine Houston Police Department investigative files;
ORU No. 13-3106

Dear General Abbott:

This is a follow-up to my letter dated June 6, 2013 (**Exhibit 1-A**). The Houston Police Department ("HPD") received the above-referenced request on May 23, 2013 (**Exhibit 1**). **HPD notes that Monday, May 27, 2013 was observed as City Holiday.** By copy of this letter, HPD is informing the requestor that HPD believes the responsive information (**Exhibits 2, 3, 4, 5, 6 and 7**) is excepted from public disclosure under section 552.108 of the Government Code. HPD advises that it will release a portion of the responsive information.

Section 552.108 of the Government Code

Section 552.108 provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.



Tex. Gov't Code § 552.108(a).

HPD advises that **Exhibit 2** pertains to criminal investigations that are inactive pending additional leads. The alleged offenses occurred on or about January 1, 2012 and May 4, 2012, respectively; however, the statute of limitations has not run. HPD further advises that the investigations may be reactivated once additional leads are developed. Therefore, release of the reports would interfere with the detection and investigation of a crime. Thus, HPD believes the reports in **Exhibits 2** should be excepted from public disclosure under section 552.108(a)(1).

HPD believes that **Exhibits 3, 4, 5, 6, and 7** should be excepted from public disclosure pursuant to section 552.108(a)(2) because the investigations concluded in a result other than conviction or deferred adjudication.

Exhibit 3 pertains to a criminal investigation that concluded in a determination to close the case because there were no suspects or arrests. In addition, the statute of limitations has expired.

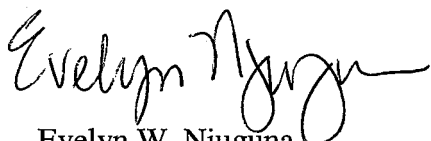
Exhibit 4 pertains to a criminal investigation that did not result in a conviction or deferred adjudication due to a lack of prosecution by the Harris County District Attorney's Office (**See Exhibit 4, PAGE 1.003**).

Exhibit 5 pertains to a criminal investigation that did not result in a conviction or deferred adjudication. HPD notes that your office has previously ruled on a portion of the information contained in **Exhibit 5** (Incident Report # 81382112-H). *See* Texas Attorney General OR2013-06447 (**Exhibit 5A**, which is non-responsive document). HPD advises that the information contained in the incident report is precisely the same information that was previously submitted to your office and the facts and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. As such, HPD believes that it may continue to rely on that ruling to withhold Incident Report #81382112-H, which is contained in **Exhibit 5**. The remainder of the information contained in **Exhibit 5** pertains to a criminal investigation which resulted in a decision by the Harris County Grand Jury to no bill the suspects. *See* **Exhibit 5**, PAGE 1.001 and **Exhibit 5B**, which is a nonresponsive document.

HPD advises that **Exhibits 6 and 7** pertain to criminal investigations that were concluded by a determination to close the cases because there were no arrests due to the death of the suspect. *See* **Exhibit 6**, PAGE 2.002 and **Exhibit 7**, PAGE 2.003, respectively.

HPD respectfully requests a ruling on this matter. Please do not hesitate to contact me at 713-308-1660 if you need additional information. Please include **ORU No. 13-3106** in any future correspondence concerning this request.

Sincerely,



Evelyn W. Njuguna
HPD Staff Attorney

EWN/jz

Enclosures

cc: Gene S. Hagood
Hagood & Neumann
1520 E. Highway 6
Alvin, Texas 77511
Sent Via Facsimile: 281-331-1105
(W/o Exhibits)



CITY OF HOUSTON

Houston Police Department

1200 Travis Houston, Texas 77002-6000 713/308-1600

Annise D. Parker, Mayor

CTY COUNCIL MEMBERS: Helena Brown Jerry Davis Ellen R. Cohen Wanda Adams Mike Sullivan Al Hoang Oliver Pennington Edward Gonzalez James G. Rodriguez
Mike Laster Larry V. Green Stephen C. Costello Andrew C. Burks, Jr. Melissa Noriega C. O. "Brad" Bradford Jack Christie CITY CONTROLLER: Ronald C. Green

June 6, 2013

Charles A. McClelland, Jr.
Chief of Police



The Honorable Greg Abbott
Texas Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

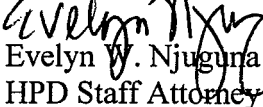
Attention: Open Records Division

Re: Public Information Act request received May 23, 2013 from Gene S.
Hagood for copies of nine Houston Police Department investigative files;
ORU No. 13-3106

Dear General Abbott:

The Houston Police Department ("HPD") received the above-referenced request on May 23, 2013 (**Exhibit 1**). HPD notes that Monday, May 27, 2013 was observed as City Holiday. By copy of this letter, HPD is informing the requestor that the Department is seeking a decision from your office because HPD believes responsive information is excepted from public disclosure pursuant to sections 552.101 through 552.153 of the Government Code. We will forward responsive information and our legal arguments under separate cover shortly. Please include **ORU No. 13-3106** in any future correspondence concerning this request.

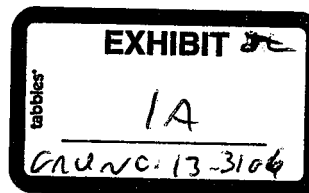
Sincerely,


Evelyn W. Njuguna
HPD Staff Attorney

EWN/jz

Enclosures

cc: Gene S. Hagood
Hagood & Neumann
1520 E. Highway 6
Alvin, Texas 77511
Sent Via Facsimile: 281-331-1105
(W/o Exhibits)



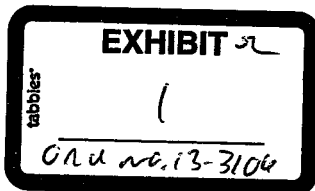
J2/01

HAGOOD & NEUMANN
ATTORNEYS AT LAW1520 E. HIGHWAY 6
ALVIN, TEXAS 77511GENE S. HAGOOD * **
WILLIAM G. NEUMANN, JR. *BOARD CERTIFIED *
PERSONAL INJURY TRIAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATIONSPECIALIST IN CIVIL TRIAL **
ADVOCACY BY THE NATIONAL
BOARD OF TRIAL ADVOCACYwww.h-nlaw.com
ALVIN-HOUSTON
281 331-5757GALVESTON - TEXAS CITY
409 946-6767TOLL FREE
1 800 832-9404FAX
281 331-1105

May 21, 2013

Attn: Records Division
Houston Police Department
120 Travis
Houston, TX 77002via fax # 713-308-3260
two (2) pagesRe: Suspect: Patrick O'Neal Spurlock
Date of Birth: 05/29/1973
Date of Death: 6/27/2012
Texas Driver's License #: 011998590

HPD Incident #:	081302412	Date: 06/27/2012	Aggravated Assault
	069782612	Date: 06/01/2012	Burglary
	056688312	Date: 05/04/2012	Burglary
	011699012	Date: 01/27/2012	Burglary
	065055410	Date: 05/06/2010	Criminal Mischief
	114054311	Date: unknown	Unknown
	081322712	Date: unknown	Unknown
	081906112	Date: unknown	Unknown - Homicide
	013570812	Date: unknown	Unknown



Ladies/Gentlemen:

This is a Public Information Act request for incident reports concerning the above listed incident numbers. I hereby request the following:

- 1) Any and all documents, including but not limited to the Houston Police Department Incident Reports, photographs, field notes, measurements, calculations, statements, witness information, call logs, emails, memoranda, reports, assignments, notes, transcripts and any other documents related to the above listed incident numbers; and,
- 2) Reproduction of all audio and videotapes.

I request that you provide certified copies of the requested materials within the statutory deadline. I will pre-pay copy expenses and/or certification fees upon receipt of request for payment from you.

If, for whatever reason, this request is refused, we would further request that these documents, photographs, audiotapes and videotapes not be destroyed or altered in any

Records Division/HPD
May 21, 2013
Page 2

way and that when it becomes acceptable for us to have said documents or a copy of same, they be made available to us.

Should you have any questions or need any additional information, please do not hesitate to contact my office.

Sincerely,



Gene S. Hagood

GSH/kl



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 22, 2013

Ms. Evelyn W. Njuguna
Staff Attorney
City of Houston Police Department
1200 Travis
Houston, Texas 77002-6000



OR2013-06447

Re: Request for the criminal investigation file for a shooting incident at the Wilshire Place Apartments on 06/27/2012; HPD case #81382112-H

Dear Ms. Njuguna:

The Office of the Attorney General has received your request for a ruling and assigned your request ID# 490229 (ORU No. 13-1753).

After reviewing your arguments and the submitted information, we have determined your request does not present a novel or complex issue. Thus, we are addressing your claims in a memorandum opinion. You claim the submitted information may be withheld from the requestor pursuant to section 552.108(a)(2) of the Government Code. We have considered your arguments and the submitted information and have determined that in accordance with section 552.108(a)(2) you may withhold the submitted information. However, you must release the basic information pursuant to section 552.108(c) of the Government Code.

For more information on the cited exception, as well as information on the rights and obligations of governmental bodies and requestors, please refer to open government information contained on the Office of the Attorney General website at www.oag.state.tx.us. You may also contact our Open Government Hotline at 1-877-OPENTEX.

Enc: Submitted documents

c: Requestor
(w/o enclosures)

Belinda Hill
First Assistant



Criminal Justice Center
1201 Franklin, Suite 600
Houston, Texas 77002-1901

HARRIS COUNTY DISTRICT ATTORNEY
MIKE ANDERSON

January 25, 2013

Captain David Gott
Houston Police Department
Homicide Division
1200 Travis #2001
Houston, Texas 77002

J. Parker
S. Straughter
RE: OR#81382112-H
Officer: K. Kemp #4770 / 87896
Officer: P. Rosa #4988 / 9703
Officer: C. Fishback Sgt / 99226
Officer: A. Heddens #1974 / 94134
Officer: D. Frank #4962 / 97577
Officer: W. Peverill #8718 / 141019
(S-12-11)

Dear Captain Gott:

The above referenced police involved incident has been presented to the 174th Judicial District Court Grand Jury. The case was presented on **January 23, 2013** and the Grand Jury has returned a **No Bill**.

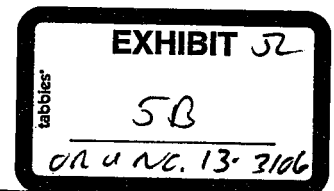
Although a No Bill has been returned in this matter, should additional admissible evidence develop, which might place the incident in a different light, subject to approval of the District Attorney, it can be represented to another Grand Jury. If you have any questions regarding this decision, call me at (713) 755-7077.

Thank you for your cooperation in this matter.

D.W. Reach

Sincerely,

Heyward Carter
Heyward Carter
Assistant District Attorney
Civil Rights Division



HC/ma

81906112-V



RECEIVED
JUN 10 2013
OPEN RECORDS DIVISION

OR 496349-13
496349

CITY OF HOUSTON

Annise D. Parker, Mayor

Houston Police Department
1200 Travis Houston, Texas 77002-6000 713/308-1600

CTY COUNCIL MEMBERS: Helena Brown Jerry Davis Ellen R. Cohen Wanda Adams Mike Sullivan Al Hoang Oliver Pennington Edward Gonzalez James G. Rodriguez
Mike Laster Larry V. Green Stephen C. Costello Andrew C. Burks, Jr. Melissa Noriega C. O. "Brad" Bradford Jack Christie CITY CONTROLLER: Ronald C. Green

RECEIVED

JUN 10 2013
OPEN RECORDS DIVISION

June 6, 2013

Charles A. McClelland, Jr.
Chief of Police



The Honorable Greg Abbott
Texas Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

Attention: Open Records Division

Re: Public Information Act request received May 23, 2013 from Gene S. Hagood for copies of nine Houston Police Department investigative files;
ORU No. 13-3106

Dear General Abbott:

The Houston Police Department ("HPD") received the above-referenced request on May 23, 2013 (**Exhibit 1**). **HPD notes that Monday, May 27, 2013 was observed as City Holiday.** By copy of this letter, HPD is informing the requestor that the Department is seeking a decision from your office because HPD believes responsive information is excepted from public disclosure pursuant to sections 552.101 through 552.153 of the Government Code. We will forward responsive information and our legal arguments under separate cover shortly. Please include **ORU No. 13-3106** in any future correspondence concerning this request.

Sincerely,

Evelyn W. Njuguna
HPD Staff Attorney

EWN/jz

Enclosures

cc: Gene S. Hagood
Hagood & Neumann
1520 E. Highway 6
Alvin, Texas 77511

Sent Via Facsimile: 281-331-1105
(W/o Exhibits)



JZ/cw

HAGOOD & NEUMANN
ATTORNEYS AT LAW1520 E. HIGHWAY 6
ALVIN, TEXAS 77511GENE S. HAGOOD * **
WILLIAM G. NEUMANN, JR. *BOARD CERTIFIED *
PERSONAL INJURY TRIAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATIONSPECIALIST IN CIVIL TRIAL **
ADVOCACY BY THE NATIONAL
BOARD OF TRIAL ADVOCACYwww.h-n-law.com
ALVIN - HOUSTON
281 331-5757GALVESTON - TEXAS CITY
409 946-6757TOLL FREE
1 800 632-9404FAX
281 331-1105

May 21, 2013

Attn: Records Division
Houston Police Department
120 Travis
Houston, TX 77002via fax # 713-308-3260
two (2) pages

Re: Suspect:	Patrick O'Neal Spurlock	
Date of Birth:	05/29/1973	
Date of Death:	6/27/2012	
Texas Driver's License #:	011998590	
HPD Incident #:	081302412	Date: 06/27/2012 Aggravated Assault
	069782612	Date: 06/01/2012 Burglary
	056688312	Date: 05/04/2012 Burglary
	011699012	Date: 01/27/2012 Burglary
	065055410	Date: 05/06/2010 Criminal Mischief
	114054311	Date: unknown Unknown
	081322712	Date: unknown Unknown
	081906112	Date: unknown Unknown - Homicide
	013570812	Date: unknown Unknown

Ladies/Gentlemen:

This is a Public Information Act request for incident reports concerning the above listed incident numbers. I hereby request the following:

- 1) Any and all documents, including but not limited to the Houston Police Department Incident Reports, photographs, field notes, measurements, calculations, statements, witness information, call logs, emails, memoranda, reports, assignments, notes, transcripts and any other documents related to the above listed incident numbers; and,
- 2) Reproduction of all audio and videotapes.

I request that you provide certified copies of the requested materials within the statutory deadline. I will pre-pay copy expenses and/or certification fees upon receipt of request for payment from you.

If, for whatever reason, this request is refused, we would further request that these documents, photographs, audiotapes and videotapes not be destroyed or altered in any

Records Division/HPD
May 21, 2013
Page 2

way and that when it becomes acceptable for us to have said documents or a copy of same, they be made available to us.

Should you have any questions or need any additional information, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read "Gene S. Hagood", with a stylized flourish at the end.

Gene S. Hagood

GSH/kl

DAVID A. ESCAMILLA
COUNTY ATTORNEY

DAN HAMRE
FIRST ASSISTANT

SHERINE E. THOMAS †
EXECUTIVE ASSISTANT

314 W. 11TH, STREET
GRANGER BLDG., 5TH FLOOR
AUSTIN, TEXAS 78701

P. O. BOX 1748
AUSTIN, TEXAS 78767

(512) 854-9513
FAX: (512) 854-4808



RECEIVED

JUN 26 2018

OPEN RECORDS DIVISION

TRANSACTIONS DIVISION

JOHN C. HILLE, JR., DIRECTOR †

BARBARA J. WILSON

JENNIFER KRABER

ANN-MARIE SHEELY

C.J. BRANDT, JR.

† Member of the College
of the State Bar of Texas

June 26, 2018

qr-726277-18
726277

Hand Delivered

Mr. Justin Gordon, Division Chief
Office of the Attorney General of Texas—Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request from **Katie Hall** received on **June 12, 2018**—Request for Ruling and
Supplemental Brief

Dear Mr. Gordon:

On behalf of the Travis County Sheriff's Office ("TCSO"), and under Government Code section 552.301, we request a ruling for this open records request. TCSO received the request on June 12, 2018. Requestor seeks "the final report of the investigation into the death of inmate Justin Daniel Dominguez...." Below is our supplemental brief setting forth the exception to the disclosure of this information.

By copy of this letter we are informing the requestor that we wish to withhold the requested information, and that we are asking for a decision from your office. Basic offense information will be released.

The requested information may be withheld under Government Code section 552.108(a)(2).

Government Code section 552.108 states in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Here, the information responsive to the request involves an investigation by TCSO's Major Crimes Unit regarding the death of an inmate. The records also involve an internal affairs report related to the investigation that is criminal in nature and involves

an investigation that has been disposed of without resulting in a conviction or deferred adjudication. The reports responsive to the request are intertwined and both involve the same facts and circumstances of the incident involved. As explained, the investigation has concluded by TSCO and did not result in an arrest, conviction or deferred adjudication. Accordingly, we assert that the responsive information may be withheld under Government Code section 552.108(a)(2). We have provided representative samples of the information for your review.

In conclusion, we ask that you rule on whether the enclosed information must be released to the requestor. If you have any questions, please contact Ann-Marie Sheely at (512) 854-9176, or by e-mail at ann-marie.sheely@traviscountytexas.gov.

Sincerely,



Ann-Marie Sheely
Assistant County Attorney

c:
Shelly Eaton
Travis County Sheriff's Office
(via email, without enclosures)

Katie Hall
Austin American Statesman
305 S. Congress
Austin, TX 78704
(via email to:

without enclosures)

Ramiro Gonzalez

From: Hall, Katie (CMG-Austin)
Sent: Tuesday, June 12, 2018 3:13 PM
To: TCSO Open Records Request
Subject: {EXTERNAL} Statesman records request

Hello,

I'd like to request the final report of the investigation into the death of inmate Justin Daniel Dominguez, 24, who died June 11, 2016, at (then named) University Medical Center Brackenridge when he was found unresponsive in the jail on June 10, 2016.

Thank you,

Katie Hall

Staff Writer | [Austin American-Statesman](#)

o 512.445.3707 m 504.473.8765

e

Follow me: [@Katie_Statesman](#)

RECEIVED

NOV 30 2012

OPEN RECORDS DIVISION

OFFICE OF CITY ATTORNEY



OK-478331-12
478331

November 27, 2012

Honorable Gregg Abbott
Texas Attorney General
Office of the Attorney General
Opinion Records Division
P. O. Box 12548
Austin, Texas 78711-2548
[CM RRR #7010 1870 0002 4641 3705]

Re: City of Wichita Falls/Request for Public Information
Ms. Mirna Hernandez, Legal Assistant, the Law Offices of Michael P. Kelly (10 + 15 Day Letter)

Dear Sir or Madam:

On November 15, 2012, the City of Wichita Falls received a request for certain documents maintained by the Wichita Falls Police Department. A copy of the request is attached as **Exhibit 1**. In all future correspondence with the City of Wichita Falls regarding this case, please refer to it as "**City ID# 561**."

The City seeks to withhold the release of information (**Exhibit 2**)(**The City has attached a representative sample as the full case file is voluminous**) pursuant to the following exceptions of Chapter 552 of the Texas Government Code (TGC):

TGC §552.103 Litigation Involving the State or a Political Subdivision

Section 552.103 of the GOVERNMENT CODE, sometimes referred to as the "litigation" exception, provides as follows:

(a) information is excepted from the requirements of section 552.021 if it is information relating to litigation of a civil or criminal nature to which the State or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

The requested information is held by the Wichita Falls Police Department. (On November 6, 2011, Wichita Falls Police Department responded to a welfare check at 123 Becky Dr. Officers were told that a male, identified as Jeffery Royal, had a gun to his head. According to witness statements, as officers arrived, Mr. Royal became more agitated. Mr. Royal proceeded to exit the vehicle with his rifle in hand. Officers ordered Mr. Royal place the rifle on the ground. Mr. Royal refused to comply with the Officers commands. The Officers, fearing for their safety, fired at Mr. Royal. Mr. Royal died as a result of this action.)*(Bracketed portion removed from requestor letter)*. Mr. Kelly wishes to obtain the offense reports, audio & transcribed statements, 911 calls, search warrants, etc., arising out of the November 6, 2011 incident. This information should be excepted under 552.103 as pending litigation.

For information to be excepted under 552.103:

1. Litigation must be pending or reasonably anticipated and
2. the information must related to that litigation.

Uni. of Tex. Law Sch. v. Tex. Legal Found., 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e).

The requestor, Mr. Kelly filed suit in the United States District Court for the Northern District of Texas Wichita Falls Division on October 12, 2012. **(Exhibit 3)**. The suit is styled *Nancy Royal, Individually and as Personal Representative of the Estate of Jeffery Cole Royal, Deceased, v. John Spragins, Michael Brown, Michael Goins, and the City of Wichita Falls, Texas Chief of Police Manuel Borrego*. Based on this, it is clear that litigation is pending as the lawsuit was filed and it arises out of the November 6, 2011 shooting incident.

Further, Mr. Kelly has requested offense reports offense reports, audio & transcribed statements, 911 calls, search warrants, etc. arising out of the November 6, 2011 incident for which he has filed suit. Clearly, this information directly relates to the litigation as the information requested arises out of the November 6, 2011 shooting incident.

The litigation exception of the Open Records Act allows governmental entities to protect their position in litigation by forcing parties seeking information related to the lawsuit to obtain it through the discovery process. *Gonzalez v. City of Laredo*, 04-95-00353-CV, 1997 WL 136505 (Tex. App.—San Antonio Mar. 26, 1997, writ denied)(not designated for publication); Tex. Att'y Gen. ORD-551 (1990); Tex. Att'y Gen. ORD-454 (1986). The intended purpose of this (552.103) exception is to prevent the use of the Open Records Act as a method to avoid discovery rules. *Id.*; Op. Tex. Att'y Gen. No. JM-1048 (1989).

In Attorney General Opinion 551, the Attorney General stated:

[D]iscovery provides an orderly and proper means for the development of relevant information under the supervision of a court of appropriate jurisdiction. The court may resolve disputes, determine and protect the interests of the parties, impose sanctions and enforce its orders. The Open Records Act, on the other hand, governs the public's right to information in the possession of governmental bodies. By excepting information from required public disclosure under the Open Records Act when access to such material is more appropriately sought through discovery, section [552.103] protects the discovery process and avoids interference in matters properly resolved in court.

Tex. Att'y Gen. ORD-551 (1990).

Here, Mr. Kelly is attempting to circumvent the rules of discovery. Mr. Kelly has filed suit and the proper method to obtain information for his case going forward is through formal discovery, not the Open Records Act. As Section 552.103(a) was intended to prevent the use of the Public Information Act to as a method of avoiding the rules of discovery, the information should be withheld.

TGC §552.108 Law Enforcement Exception

Section 552.108 of the GOVERNMENT CODE, sometimes referred to as the "law enforcement" exception, provides as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.

The requested information is part of Wichita Falls Police Department Report No. 11-110406 which was a criminal investigation that did not ultimately result in a conviction or deferred adjudication. (**Exhibit 4, Letter of Wichita Falls Police Lieutenant Richard Garza**). Therefore, it is excepted from disclosure.

TGC §552.101 Confidential 9-1-1 Call Information-Health and Safety Code §772.318

Some of the requested information is not releasable to the requestor pursuant to Texas Gov't Code § 552.101 which excepts information deemed "confidential by law, either by constitutional, statutory or by judicial decisions." For this section to apply, there must be another source of law providing for confidentiality of the requested information. Texas Health and Safety Code §772.318 requires a service supplier of 9-1-1 calls to "furnish for each call the telephone number of the subscriber and the address associated with the

number.” However, the same section also provides that “information furnished under this section is confidential and is not available for public inspection.”

The requested information in the 9-1-1 Event Detail Report was acquired through an automatic number identifier and an automatic location identifier. The call dispatch center in question is part of the Wichita/Wilbarger County emergency communication district as required by Health and Safety Code §772.304. We ascertain that the information contained in the 9-1-1 Event Detail Report is part of the closed investigation and release of these reports are confidential and prohibited.

Notwithstanding, the City maintains that all of the requested information is excepted from disclosure under 552.103. The City of Wichita Falls respectfully requests an opinion from the Attorney General as to whether the City is required to release the requested information.

By copy of this letter, we are advising the requestor that the City wishes to withhold the information requested, and that it is seeking a decision from your office as to whether the information is excepted from public disclosure.

If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. A. McKechnie', with a long horizontal flourish extending to the right.

James A. McKechnie
Assistant City Attorney

xc: Law Office of Michael P. Kelly
Ms. Mirna Hernandez
4024 Elm St., Ste. A
Dallas, TX 75226
w/o enclosures

THE LAW OFFICE OF MICHAEL P. KELLY

LICENSED and ADMITED
In TX, OK and CO

4024 ELM STREET, SUITE A
DALLAS, TEXAS 75226
(214) 821-7255
(214) 821-7251 FAX

MAILING ADDRESS:
P.O. BOX 150589
DALLAS, TEXAS 75315-0589

November 12, 2012

Via Facsimile 940.761.7486

Wichita Falls Police Department
Attn: Barry Levy
610 Holliday St.
Wichita Falls, Texas 76301

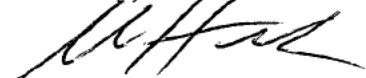
*Re: Open Records Request
City ID: 236*

Dear Sir/Madam:

Please be advised our office represents Nancy Lea Royal. Please be advised at this time we are requesting any and all offense, incident reports, search warrants, 911 calls, photographs, video tapes, audio tapes, and anything additional from the date of November 06, 2011 pertaining to Jeffery Cole Royal (deceased).

Please notify our office if the cost of this request should exceed One Hundred Dollars (\$100.00). Should you have any questions or concerns, please feel free to contact our office at the above-listed address.

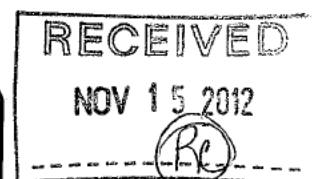
Sincerely,



Mirna Hernandez
Legal Assistant/Claims Specialist

NOV 15 2012

RL





Manuel Borrego, Chief of Police

Office of the Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

November 20, 2012

Attention: Open Records Division

Dear Sir or Madam:

I am a Lieutenant with the Wichita Falls Police Department, and I am writing this letter to protect our office's interest in the detection, investigation, or prosecution of crime.

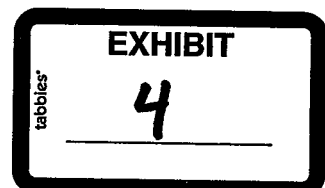
Ms. Mirna Hernandez, Legal Assistant, the Law Offices of Michael P. Kelly has requested a copy of the police report No. 11-110406 arising out of the November 6, 2011 Jeffery Royal shooting. These reports have been classified by our office as a closed case that did not result in a conviction or deferred adjudication. Therefore pursuant to the "law enforcement exception" of the Texas Public Information Act our office respectfully requests an opinion that the information requested be excepted from required disclosure.

Therefore pursuant to the "law enforcement exception" of the Texas Public Information Act our office respectfully requests an opinion that the information requested be excepted from required disclosure.

Respectfully Submitted,

Manuel Borrego
Chief of Police
Wichita Falls, Texas

By: Richard Garza
Lieutenant Office of Professional Conduct





RECEIVED

JUN 21 2013

OPEN RECORDS DIVISION

CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY
Charles H. Weir - Assistant City Attorney
PHONE NO: (210) 207-8946

Delivery Address
City Hall, 3rd Floor, P.O. Box 839966
San Antonio, Texas 78283

June 20, 2013

02-497665-13

497665

Amanda Crawford
Office of the Attorney General
Open Government Section
P.O. Box 12548
Austin, Texas 78711-2548

Requestor: Cloris Medina
Organization: City of San Antonio
Date request received: June 5, 2013
COSA File No. W016066

Dear Ms. Crawford:

On June 5, 2013 the City of San Antonio received a public information request from Cloris Medina in which she requested:

Offense Report Number(s): 00322900

The request is attached to this letter. **[Attachment 1 – Copy of Request]**

The aforementioned San Antonio Police Department case is a closed investigation that did not result in conviction or deferred adjudication. By this letter the city seeks to withhold some of the information within the documents under section 552.108(a)(2) of the Public Information Act. The city has submitted copies of the requested records which the city seeks to withhold and argument supporting the asserted exceptions. **[Attachment 2 – Copy of Records Submitted for AG Review]**

Some or all of the Requested Records are Protected under Section 552.108, the Law Enforcement Exception

Under the Public Information Act 552.108, information related to law enforcement activity is also protected. Section 552.108 provides, in relevant part:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

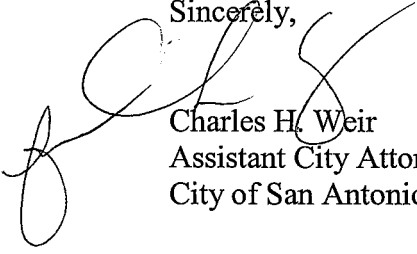
(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.

Section 552.108 applies only to records that can be characterized as the records of law enforcement agencies or prosecutors. This has been defined as an agency whose primary function is to investigate crimes and enforce the criminal laws. Open Records Decision No. 493 at 2 (1988). The San Antonio Police Department's primary function is the investigation and enforcement of criminal laws.

Conclusion

The Office of the City Attorney seeks authority to withhold the enclosed records for the reasons stated in this letter brief. Please feel free to contact me if you have any questions.

Sincerely,



Charles H. Weir
Assistant City Attorney
City of San Antonio

cc:

Cloris Medina
31 Haley Dr.
Chatsworth, GA 30705

w/o enclosures



City of San Antonio

Reference Number: W016066-060513

Date Submitted: 6/5/2013 5:35:35 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 6/20/2013 5:00:00 PM

Requestor:

cloris medina

31 haley dr.

chatsworth, GA 30705

404-399-5380

Information Requested: Police Investigation File

Describe the document(s) you are requesting: Investigative report - case#00322900\01



RECEIVED

OCT 15 2012

OPEN RECORDS DIVISION

CITY OF HOUSTON

Houston Police Department

Annise D. Parker, Mayor

1200 Travis Houston, Texas 77002-6000 713/308-1600

CITY COUNCIL MEMBERS: Helena Brown Jerry Davis Ellen R. Cohen Wanda Adams Mike Sullivan Al Hoang Oliver Pennington Edward Gonzalez James G. Rodriguez
Mike Laster Larry V. Green Stephen C. Costello Andrew C. Burks, Jr. Melissa Noriega C. O. "Brad" Bradford Jack Christie CITY CONTROLLER: Ronald C. Green

October 11, 2012

Charles A. McClelland, Jr.
Chief of Police



The Honorable Greg Abbott
Texas Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

OR-473598-D
474222

Attention: Open Records Division

Re: Public Information Act request received September 24, 2012 from Aaron Wische
for a copy of the Houston Police Department case file pertaining to incident
#147715209-X and incident #147878409-R ORU No. 12-5611

Dear General Abbott:

This is a follow-up to my letter dated October 4, 2012 (**Exhibit 1A**). The Houston Police Department ("HPD") received the above-referenced request on September 24, 2012 (**Exhibit 1**). By copy of this letter, HPD is informing the requestor that HPD believes responsive information (**Exhibits 2, 3 and 4**) is excepted from public disclosure under sections 552.101 and 552.108 of the Government Code.

Section 552.101 of the Government Code

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." TEX. GOV'T CODE §552.101.

HPD Personnel File

Section 552.101 of the Government Code encompasses information made confidential by other statutes. **Exhibits 2** contains information that is maintained in the Houston Police Department (HPD) officers' departmental personnel file maintained under section 143.089(g) of the Texas Local Government Code.

Section 143.089(g) provides:

A . . . police department may maintain a personnel file on a . . . police officer employed by the [police] department for the [police] department's use, but the [police] department



may not release any information contained in the [police] department file to any agency or person requesting information relating to a . . . police officer. The [police] department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the . . . or police officer's personnel file.

Exhibit 2 is contained in the officer's personnel file which is maintained internally by HPD for its own use and relates to the officers' employment relationship with the police department. Thus, HPD believes the responsive information (**Exhibit 2**), is confidential pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

IAD Investigatory File

Section 552.101 encompasses information protected by other statutes. The City of Houston is a civil service city under chapter 143 of the Texas Local Government Code. Section 143.1214 of the Local Government Code provides in part:

(b) The [police] department shall maintain an investigatory file that relates to a disciplinary action against a . . . police officer that was overturned on appeal, or any document in the possession of the [police] department that relates to a charge of misconduct against a . . . police officer, regardless of whether the charge is sustained, only in a file created by the [police] department for the [police] department's use. The [police] department may only release information in those investigatory files or documents relating to a charge of misconduct:

- (1) to another law enforcement agency or fire department;
- (2) to the office of a district or United States attorney; or
- (3) in accordance with Subsection (c).

(c) The [police] department head or the [police] department head's designee may forward a document that relates to disciplinary action against a . . . police officer to the director or the director's designee for inclusion in the firefighter's or police officer's personnel file maintained under Sections 143.089(a)-(f) only if:

- (1) disciplinary action was actually taken against the . . . police officer;
- (2) the document shows the disciplinary action taken; and
- (3) the document includes at least a brief summary of the facts on which the disciplinary action was based.

The information contained in **Exhibit 3** consists of an investigation conducted by the HPD's Internal Affairs Division of alleged misconduct by a police officer. Information contained in Exhibit 3 is maintained in the police department's investigatory files and is not part of the police officer's civil service personnel file. The allegations of misconduct were classified as justified and no disciplinary

action was taken. As such, the information in question does not meet the conditions specified by section 143.1214(c) for inclusion in the police officer's personnel files under section 143.089(a) of the Local Government Code.

Additionally, the requester is not a representative of another law enforcement agency, a fire department, or the office of a district or United States attorney. *See id.* § 143.1214(b)(1)-(2). Accordingly, the City believes that it must withhold the information contained in **Exhibit 3** under section 552.101 of the Government Code in conjunction with section 143.1214(b) of the Local Government Code.

Section 552.108 of the Government Code

Section 552.108 provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

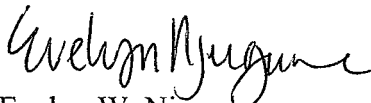
(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.

Gov't Code § 552.108(a)(2).

HPD advises that **Exhibit 4** pertains to a criminal investigation that did not result in conviction or deferred adjudication. HPD advises that investigation was concluded by the Harris County Grand Jury's decision to no bill the officer (**See Exhibit 4, PAGE 2.004**). Therefore, HPD believes the information should be excepted from public disclosure pursuant to section 552.108(a)(2) because it concluded in a result other than conviction or deferred adjudication.

HPD respectfully requests a ruling on this matter. Please do not hesitate to contact me at 713-308-1660 if you need additional information. Please include **ORU No. 12-5611** in any future correspondence concerning this request.

Sincerely,



Evelyn W. Njuguna
HPD Staff Attorney

EWN/jz

Enclosures

cc: Aaron Wische, Executive Producer
KPRC-TV
8181 Southwest Freeway
Houston, Texas 77002
Sent Via Electronic Mail:
(W/o Exhibits)



CITY OF HOUSTON

Houston Police Department

Annise D. Parker, Mayor

1200 Travis Houston, Texas 77002-6000 713/308-1600

CITY COUNCIL MEMBERS: Helena Brown Jerry Davis Ellen R. Cohen Wanda Adams Mike Sullivan Al Hoang Oliver Pennington Edward Gonzalez James G. Rodriguez
Mike Laster Larry V. Green Stephen C. Costello Andrew C. Burks, Jr. Melissa Noriega C. O. "Brad" Bradford Jack Christie CITY CONTROLLER: Ronald C. Green

October 4, 2012

Charles A. McClelland, Jr.
Chief of Police



The Honorable Greg Abbott
Texas Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

Attention: Open Records Division

Re: Public Information Act request received September 24, 2012 from Aaron Wische for a copy of the Houston Police Department case file pertaining to incident #147715209-X and incident #147878409-R ORU No. 12-5611

Dear General Abbott:

The Houston Police Department ("HPD") received the above-referenced request on September 24, 2012 (**Exhibit 1**). By copy of this letter, HPD is informing the requestor that the Department is seeking a decision from your office because HPD believes responsive information is excepted from public disclosure pursuant to sections 552.101 through 552.151 of the Government Code. We will forward responsive information and our legal arguments under separate cover shortly. Please include **ORU No. 12-5611** in any future correspondence concerning this request.

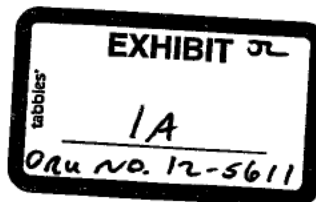
Sincerely,

Evelyn W. Njuguna
Evelyn W. Njuguna
HPD Staff Attorney

EWN/jz

Enclosures

cc: Aaron Wische, Executive Producer
KPRC-TV
8181 Southwest Freeway
Houston, Texas 77002
Sent Via Electronic Mail:
(W/o Exhibit)



OPEN RECORDS REQUEST TRACKING

OR#: 12-5611

Date Request Received: 9/24/2012

Request Type: Open Records

10 Day Deadline (Letter Deadline): 10/8 /2012

15 Day Deadline (Document Deadline): 10/15/2012

Requestor

Company: KPRC-TV CHANNEL 2

Name WISCHE, AARON

Phone#: (713) 778-8941

Fax#: (713) 771-4930

Request Date:

Assigned To: JOE ZAPATA

Subject of Request

COPY OF PERSONNEL FILE FOR OFFICER MATTHEW MARIN, COMPLETE INVESTIGATION OF A FATAL SHOOTING INVOLVING OFFICER MARIN IN 2009

Records Requested From:

Name:

Date Records Requested:

Date Records Returned:

Date Sent to Legal Dept:

Letter Sent to AG:

Date Sent to AG:

Exceptions Applied:

AG Opinion#:

Date Response Sent to Requestor:

Material Sent:

Invoice Paid Date:

Invoice Amount:

Date Closed:

Entered By: Yesenia

JZmw

HPD OpenRecs - Open Records Request

From: Aaron Wische
To: <hpd.openrecs@cityofhouston.net>
Date: 9/24/2012 9:58 AM
Subject: Open Records Request

Pursuant to the Texas Open Records Act, we are requesting access to, and inspection of, the following records and/or electronic records maintained by or for the Houston Police Department:

- **Complete personnel file for Officer Matthew Marin**
- **Complete investigation of a fatal shooting involving Officer Matthew Marin in 2009**

As you know, the Texas Open Records Act provides that if portions of a document are exempt from release, the remainder must be segregated and disclosed. Therefore, I will expect you to send me all non-exempt portions of the records, which I have requested, and ask that you justify any deletions by reference to specific exemptions. I reserve the right to appeal your decisions to withhold any materials.

Since some of the documents listed above may be more readily available than others please provide the documents that are available as soon as possible without waiting to provide access to all documents. I promise to pay reasonable search and duplication fees in connection with this request. However, if you estimate that the total fee will exceed \$100, please notify me so I may authorize the expenditure of a greater amount.

We look forward to hearing from you within the ten day time guideline set up in the Texas Open Records Act. Please call me with any questions.

Aaron Wische
Executive Producer, Special Projects
KPRC Local 2
713-778-8941 (desk)
713-771-4930 (fax)

<http://www.facebook.com/#!/KPRC2>
<https://twitter.com/KPRCLocal2>





RECEIVED

OCT 09 2012

CITY OF HOUSTON

OPEN RECORDS DIVISION

Houston Police Department

Annise D. Parker, Mayor

1200 Travis Houston, Texas 77002-6000 713/308-1600

CITY COUNCIL MEMBERS: Helena Brown Jerry Davis Ellen R. Cohen Wanda Adams Mike Sullivan Al Hoang Oliver Pennington Edward Gonzalez James G. Rodriguez
Mike Laster Larry V. Green Stephen C. Costello Andrew C. Burks, Jr. Melissa Noriega C. O. "Brad" Bradford Jack Christie CITY CONTROLLER: Ronald C. Green

October 4, 2012

Charles A. McClelland, Jr.
Chief of Police



02-473598-12
473598

The Honorable Greg Abbott
Texas Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

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Sincerely,

Evelyn W. Njuguna
Evelyn W. Njuguna
HPD Staff Attorney

EWN/jz

Enclosures

cc: Aaron Wische, Executive Producer
KPRC-TV
8181 Southwest Freeway
Houston, Texas 77002
Sent Via Electronic Mail:
(W/o Exhibit)



OPEN RECORDS REQUEST TRACKING

OR#: 12-5611

Date Request Received: 9 /24/2012

Request Type: Open Records

10 Day Deadline (Letter Deadline): 10/8 /2012

15 Day Deadline (Document Deadline): 10/15/2012

Requestor

Company: KPRC-TV CHANNEL 2

Name WISCHE, AARON

Phone#: (713) 778-8941

Fax#: (713) 771-4930

Request Date:

Assigned To: JOE ZAPATA

Subject of Request

COPY OF PERSONNEL FILE FOR OFFICER MATTHEW MARIN, COMPLETE INVESTIGATION OF A FATAL SHOOTING INVOLVING OFFICER MARIN IN 2009

Records Requested From:

Name:

Date Records Requested:

Date Records Returned:

Date Sent to Legal Dept:

Letter Sent to AG:

Date Sent to AG:

Exceptions Applied:

AG Opinion#:

Date Response Sent to Requestor:

Material Sent:

Invoice Paid Date:

Invoice Amount:

Date Closed:

Entered By: Yesenia

J21mw

HPD OpenRecs - Open Records Request

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To: <hpd.openrecs@cityofhouston.net>
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We look forward to hearing from you within the ten day time guideline set up in the Texas Open Records Act. Please call me with any questions.

Aaron Wische
Executive Producer, Special Projects
KPRC Local 2
713-778-8941 (desk)
713-771-4930 (fax)

<http://www.facebook.com/#!/KPRC2>
<https://twitter.com/KPRCLocal2>

RECEIVED

JUL 16 2018

OPEN RECORDS DIVISION

OK-729307-16
729307



CITY OF KILLEEN
OFFICE OF THE CITY ATTORNEY

July 12, 2018

Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, TX 78711-2548

RE: RELEASE OF CERTAIN INVESTIGATION FILE

Dear Sir or Madame:

Pursuant to Texas Government Code Section 552.301, this letter requests an Attorney General's opinion for a determination of whether the content of certain file(s) is public information.

FACTS

On Wednesday, July 11, 2018, at 5:28 p.m., requestor submitted a written request to the Killeen Police Department asking for "... any dash cam video of an incident Killeen PD responded to on May 2nd around 4:59 p.m." Requestor also states within her request that, "the call was for a suicidal subject"; requestor provides call for service number K18054350 as the police record which coincides with the incident. A copy of the request is enclosed as **Attachment A**. As the request was received outside of the City of Killeen's normal business hours, city staff did not receive the request until Thursday, July 12, 2018 at 8:00 a.m. We have not released any portion of any video associated with the above referenced incident.

We have assigned this request ID #W026076; please provide this request number with your response.

CITY'S POSITION
Common Law Privacy

The City takes the position that the requested information is excepted from disclosure pursuant to Government Code section 552.101. That section excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses common law privacy.

Common-law privacy protects information if the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person. The type of information considered intimate and embarrassing by the Texas Supreme Court includes information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. See *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

As is evident from a reading of call for service number K18054350 and a review of the representative sample of video provided, the concern is the reference to one or more of the types of information considered intimate or embarrassing by the Texas Supreme Court. The contents of the call for service should be protected in its entirety based on the *Industrial Foundation of the South* case cited above.

No Charges/No Conviction

The City of Killeen takes the position that the information contained in the call for service and its related cruiser videos is not subject to public disclosure pursuant to the Public Information Act exclusion contained in Texas Government Code section 552.108(a)(2), the law enforcement exception.

Section 552.108(a) provides in part:

Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (2) it is information that deals with the detection, investigation or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.

The police department has concluded its investigation into the incident which is the subject of call for service number K18054350 and its related cruiser videos and does not anticipate filing any charges based on the call for service in the future. Therefore, the investigation has concluded in a result other than conviction or deferred adjudication and the call for service and its related cruiser videos should be excepted.

CONCLUSION

This City of Killeen believes the remaining information contained in the call for service and its related cruiser videos should not be released based on section 552.101, common law privacy; and 552.108, law enforcement, as the investigation of the incident concluded in a result other than conviction or deferred adjudication.

c.c. without attachments: Estephany Escobar
KXXV TV
1909 S. New Road
Waco, Texas 76711

W026076-071118 - Open Records Request

Recd. by city staff on:
Thurs, July 12, 2018 @ 8:05 AM
Due: Thurs, July 26, 2018

Open Records Request Details

Open Records Request Details

Type of Information Requested: Police *EMAIL*

Public Record Desired: I would like to request any dash cam video of an incident Killeen PD responded to on May 2nd around 4:59 p.m. The call was for a suicidal subject (Incident #K18054350). Officer Larson (Badge 377) responded to that call. I'm working on a story about a volunteer group that brings in counselors to scenes to help veterans in crisis. I was hoping to use some of the video for our story tomorrow (7/12). Please describe in detail the documents you would like to receive.

Preferred Method to Receive Documents: Electronic by Email (if available)

Documents Delivered By:

Date Payment Received:

Amount of Payment:

Receipt Number:

Attorney General Letter Ruling Number:

Message History

Date *Submitted outside of COK normal business hours.*
On 7/11/2018 5:28:21 PM Reporter Estephany Escobar wrote:
Request was created by customer

Date

On 7/11/2018 5:27:57 PM, System Generated Message:
Confirmation Message sent to: **Reporter Estephany Escobar**
Subject: Killeen Open Records Center :: W026076-071118
Body:

Dear Estephany Escobar,

We have received your Open Records Request and it has been given the reference number **W026076-071118** for tracking purposes.

The Texas Public Information Act does not require a governmental body to create new information, to do legal research, or to answer questions. The request must ask for records or information already in existence. The governmental body will try to complete the request as soon as possible with notification if the request will require more than 10 business days to complete, not including weekends or holiday closures. The governmental body may collect a fee as prescribed by law or regulation for the requested documents. If a fee is not prescribed by law or regulation, the fee shall be the actual cost of duplicating the record(s).








You can monitor the progress of this issue at the link below and you'll receive an email when your request has been completed. Again, thank you for using the Open Records Center.

Sincerely,
The City of Killeen

Track the issue status and respond at: <http://mygovhelp.us/KILLEENTX//cs/RequestEdit.aspx?rid=26076>

Request Details

Reference No:	W026076-071118
Create Date:	7/11/2018 5:27 PM
Update Date:	7/11/2018 5:27 PM
Completed/Closed:	No
Required Completion Date:	7/24/2018
Status:	New Request
Priority:	Medium
Assigned Dept:	Police
Assigned Staff:	Gina Conway
Customer Name:	Reporter Estephany Escobar
Email Address:	
Phone:	6085584433
Source:	Web

 Edit
  New Message ▼
  Send Password
  Add ▼
  Forward
  Print
  Print

Details

Title: Reporter
 First Name: Estephany
 Last Name: Escobar
 Active: Yes
 Source:







Contact Information

Customer Email:
 Address: 1909 S. New Road
 City: Waco
 State/Province: TX
 Zip/Postal Code: 76711
 Phone: 608-558-4433

Additional Information

Fax Number: 254-754-0331
 Company Name: KXXV-TV

Issue History

	Reference No	Request	Status	Priority	Assigned	Assigned	Customer	Create	Created	Source	Updated
	W026076-071118	Open Records Request	New Request	Medium	Police	Linda Pemberton	eescobar	7/11/2018		Web	Linda Pemberton
	W025137-040318	Open Records Request	Withdrawn per Requestor	Medium	Police	Gina Conway	eescobar	4/3/2018		Web	Linda Pemberton
	W023005-073117	Open Records Request	Sent for Opinion	Medium	Animal Control	Linda Pemberton	eescobar	7/31/2018		Web	Dianne Morrow
	W018301-012616	Open Records Request	Sent for Opinion	Medium	Police	Linda Pemberton	eescobar	1/26/2018	Linda Pemberton	Email	Linda Pemberton
	W017481-100315	Open Records Request	Full Release	Medium	Police	Linda Pemberton	eescobar	9/21/2017	Linda Pemberton	Email	Linda Pemberton
	W017380-092315	Open Records Request	Sent for Opinion	Medium	Police	Linda Pemberton	eescobar	9/23/2017		Web	Linda Pemberton



CITY OF KILLEEN
OFFICE OF THE CITY ATTORNEY

July 12, 2018

Estephany Escobar
KXXV TV
1909 S. New Road
Waco, Texas 76711

Request for Information #: W026076

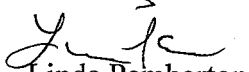
Dear Ms. Escobar:

The city is in receipt of your written request submitted to the Killeen Police Department asking for "... any dash cam video of an incident Killeen PD responded to on May 2nd around 4:59 p.m." You also state, within your request that, "the call was for a suicidal subject"; you provided call for service number K18054350 as the police record which coincides with the incident. The city believes that some of the requested information is protected by section 552.101, common law privacy; and section 552.108, law enforcement, as the investigation of the incident concluded in a result other than conviction or deferred adjudication. As such, we are not releasing any portion of any video associated with the above referenced incident.

The city has asked the Texas Attorney General for a ruling on whether the documents must be disclosed. You also have an opportunity to submit comments to the Attorney General as to why you believe the information should be released. See section 552.304 of the Government Code or contact the Attorney General's office for more information. Attached, you will find a copy of our request to the Attorney General, excluding the attachments at issue.

If you have any further questions regarding your open records request, you may contact me at 254/501-6342.

Sincerely,


Linda Pemberton
Paralegal

Attachment

MAY 18 2018

OPEN RECORDS DIVISION

Eric Johnston
ejohnston@mcginnislaw.com
(512) 495-6064 o
(512) 505-6364 f

7/18528
720297

May 14, 2018

The Honorable Ken Paxton
ATTORNEY GENERAL, STATE OF TEXAS
209 West 14th Street
Austin, Texas 78701
ATTN: Open Records Division

Via First Class Mail

Re: Brief in Support of Request for Open Records Decision

ID No.:

Requestor:

Records Requested From:

Date of Request:

T. Dean Malone, Law Offices of Dean Malone

Coryell County Sheriff's Office

April 19, 2018, but received on April 23, 2018

Dear Attorney General Paxton:

This firm represents the Coryell County Sheriff's Office ("CCSO") in connection with the above-referenced matter. On behalf of CCSO, I respectfully submit this Brief in Support of a Request for a Decision from the Office of the Attorney General regarding the authority and obligation of CCSO to withhold certain requested information from public disclosure. This Brief is submitted pursuant to the Texas Public Information Act, § 552.301 et seq. of the Texas Government Code (the "Act").

STATEMENT OF RELEVANT FACTS

On April 23, 2018, CCSO received the enclosed request from T. Dean Malone with the Law Offices of Dean Malone. The Request is attached hereto as Exhibit 1.

All of the responsive material is excepted from disclosure. As such, on May 7, 2018, CCSO timely requested an Open Records Decision from your Office. Attached as Exhibit 2 is a copy of our letter requesting an opinion, which was also served on the Requestor. We now timely file this Brief on behalf of CCSO. The responsive video is attached hereto for your review as Exhibit 3.

BACKGROUND INFORMATION

On October 8, 2017 Kellie Leanne Page died while in custody in the Coryell County Jail. The death of Ms. Page was investigated by Texas Ranger Adam Russell to determine whether her death was the result of an unlawful act for which criminal charges could be sought. The District Attorney requested a Coroner's Inquest be held to inquire into the death of Ms. Page. As Coryell County has no medical examiner or coroner, the inquest was held by Coy Latham, Justice of the Peace, Precinct Four, of Coryell County, Texas.

At the inquest, Judge Latham ruled the death of Ms. Page was not the result of any unlawful conduct.

ARGUMENT AND AUTHORITIES

This request seeks information excepted from disclosure. CCSO is withholding the responsive video because it contains information that is excepted from disclosure pursuant to the following exceptions: Sections 552.101, 552.103, and 552.108 of the Government Code and Chapter 49 of the Texas Code of Criminal Procedure.

The Requested Material Contains Information that is Excepted from Disclosure by Section 552.101 of the Act.

Section 552.101 of the Government Code provides as follows:

Information is excepted from [required public disclosure] if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.

This section makes clear that the Public Information Act does not mandate the disclosure of information that other law requires be kept confidential. Section 552.101 encompasses information made confidential by other statutes, such as Article 49.15(d) of the Texas Criminal Code of Procedure, which provides, in relevant part:

(d) The justice of the peace shall certify a copy of the inquest summary report and deliver the certified copy in a sealed envelope to the clerk of the district court. The clerk of the district court shall retain the summary report subject to an order by the district court.

The requestor seeks a video recording, which was State's Exhibit 2 at an inquest hearing relating to the death of Kelli Leanne Page. This exhibit is part of the inquest summary report and is sealed subject to an order by the district court.

552.101 – Embarrassing Information in Medical Records

Additionally, your office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). The responsive documents contain medical information that should be withheld as there is no legitimate public concern served by the release of this information.

The responsive material is labeled and attached hereto as Exhibit 3.

The Requested Materials Contain Information that is Excepted from Disclosure by Section 552.103 of the Act.

Section 552.103, commonly referred to as the litigation exception, excepts from disclosure “information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party.” See TEX. GOV’T CODE § 552.103(a). Further, the litigation exception instructs that information is excepted “only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.” See TEX. GOV’T CODE § 552.103(c). CCSO is withholding information that relates to pending and/or reasonably anticipated litigation.

Section 552.103(a) of the Act was intended to prevent the use of the Act as a method of avoiding the rules of discovery used in litigation. *Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App.--Austin 2002, no pet.). This exception enables a government to protect its position in litigation “by forcing parties seeking information relating to that litigation to obtain it through discovery, if at all.” Tex. Att’y Gen. ORD-551, at 3 (1990) (emphasis added). The Attorney General has stated, “[w]e do not believe that the [Act] was intended to provide parties involved in litigation any earlier or greater access to information that was already available in such litigation.” *Id.*

It is also instructive to consider standards for exception from release of documents under the federal Freedom of Information Act (“FOIA”). *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360-61 (Tex. 2000) (plurality op.) (FOIA is instructive in construing the Texas Public Information Act). The U.S. Supreme Court has made clear that FOIA was not enacted for the benefit of private litigants. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 143 n. 10 (1975); *Fenster v. Brown*, 617 F.2d 740, 743-44 (D.C. Cir. 1979) (“The [FOIA] was fundamentally designed to inform the public not to benefit private litigants.”).

Information may be withheld under Section 552.103 of the Act if the governmental body establishes that: (1) litigation is pending or reasonably anticipated on the date of the request, and (2) the information requested is related to the pending litigation. *Univ. Tex. Law School v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.). The definition of “reasonably anticipated” is fact specific and takes into account the surrounding circumstances of each situation. *Id.* There is no requirement that the individual requesting information be a party to the litigation, just that the information requested is related to litigation/pending litigation. Tex. Att’y Gen. ORD-551, at 4; Tex. Att’y Gen. ORD-647 (1996).

Prior to the time of the Request, the Texas Rangers conducted an investigation into the incident that is the subject of the Request. Therefore, the responsive material contains information of a potential criminal nature to which the State of Texas would be a party. Moreover, the family of Kelli Leanne Page has made statements alluding to a civil lawsuit. Accordingly, the responsive material shall be withheld.

The responsive material is labeled and attached hereto as Exhibit 3.

The Honorable Ken Paxton
May 14, 2018
Page 4

The Requested Documents Contain Information that is Excepted from Disclosure by Section 552.108(a)(2) and 552.108(b)(2) of the Act.

Section 552.108 (a)(2) excepts from disclosure the following:

Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (2) it is information that deals with the detection, investigation, or prosecution of a crime only in relation to an investigation that did not result in conviction or deferred adjudication . . .

Additionally, Section 552.108(b)(2) excepts the following:

An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matter relating to law enforcement or prosecution . . . if: (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication. . .

The requested information includes documentation of the death of Kelli Leanne Page, which was investigated by the Coryell County District Attorney for the purposes of potential criminal prosecution. All of the responsive information was gathered, examined and/or used by the Texas Rangers or the District Attorney in the course of the investigation of the death of Ms. Page. The investigation did not result in conviction or deferred adjudication. Accordingly, all information is excepted from disclosure under Section 552.108.

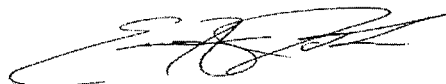
The responsive material is labeled and attached hereto as Exhibit 3.

CONCLUSION

For the reasons set forth above, CCSO asserts that the information requested by T. Dean Malone is excepted from disclosure under the Texas Public Information Act.

Please do not hesitate to contact my office if you have any questions regarding this matter.

Sincerely,



Eric A. Johnston, Partner

Enclosure

cc: T. Dean Malone (w/o enclosure) – *VIA* U.S. Mail
Law Offices of Dean Malone
Founders Square
900 Jackson Street, Suite 730
Dallas, TX 75202

EXHIBIT 1

Founders Square
900 Jackson Street, Suite 730
Dallas, Texas 75202



Telephone: 214.670.9989
Fax: 214.670.9904
www.deanmalonelawfirm.com

April 19, 2018

Via CM/RRR - 92147969009997901621024147

Coryell County Sheriff's Office
ATTN: Records Clerk/Records Request
510 Leon Street
Gatesville, TX 76528

RE: Public Information Act Request (3819 FD)

Dear Coryell County Sheriff's Office:

I respectfully request, pursuant to Chapter 49 of the Texas Code of Criminal Procedure, a copy of the video recording which was State's Exhibit 2 at an inquest hearing occurring on December 19, 2017 related to the death of Kelli Leanne Page. I am willing to pay a reasonable fee for the copy.

Sincerely,

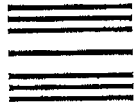


T. Dean Malone

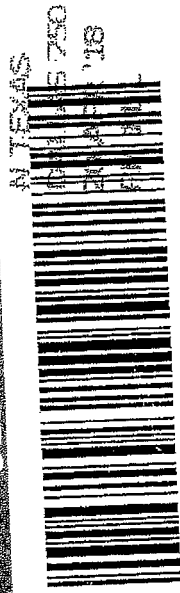
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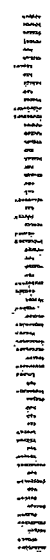
—LAW OFFICES OF—
DEAN MALONE
Founders Square, Suite 730
900 Jackson Street, Dallas Texas 75202

CORYELL COUNTY

APR 23 2018

Coryell County Sheriff's Office
ATTN: Records Clerk/Records Request
510 Leon Street
Gatesville, TX 76528

SHERIFF'S OFFICE



75528-206299



Telephone: 214.670.9989
Fax: 214.670.9904
www.deanmalonelawfirm.com

9, 2018

819 FD)

49 of the Texas Code of Criminal Procedure, a
Exhibit 2 at an inquest hearing occurring on
Leanne Page. I am willing to pay a reasonable

Sincerely,

T. Dean Malone

EXHIBIT 2

MCGINNIS LOCHRIDGE

Eric A. Johnston
ejohnston@mcginnislaw.com
(512) 495-6064 o
(512) 505-6364 f

May 7, 2018

The Honorable Ken Paxton
ATTORNEY GENERAL, STATE OF TEXAS
209 West 14th Street
Austin, Texas 78701
ATTN: Open Records Division

Via First Class Mail

Re: Request for Open Records Decision regarding Public Information Act Request to Coryell County Sheriff's Office from T. Dean Malone with the Law Offices of Dean Malone dated April 19, 2018, but received on April 23, 2018

Dear Attorney General Paxton:

This firm represents the Coryell County Sheriff's Office ("CCSO") in connection with the above-referenced matter. On behalf of CCSO, I respectfully submit this request for a decision from the Office of the Attorney General regarding the authority and obligation of CCSO to withhold the requested information from public disclosure. This request is submitted pursuant to the Texas Public Information Act, § 552.301 *et seq.* of the Texas Government Code (the "Act").

On April 23, 2018, CCSO received the enclosed request from T. Dean Malone with the Law Offices of Dean Malone. The information sought through this request is excepted from disclosure pursuant to the following exceptions: Sections 552.101, 552.103, 552.107, 552.108, 552.111, and 552.152 of the Government Code and Chapter 49 of the Code of Criminal Procedure.

We are providing the requestor with a copy of this correspondence in compliance with § 552.301(d) of the Act. Within five (5) business days, I will submit to your office written comments outlining the reasons why the stated exceptions apply and a copy of the requested information.

Please do not hesitate to contact my office if you have any questions regarding this matter.

Sincerely,



Eric A. Johnston, Partner

Enclosure

The Honorable Ken Paxton

May 7, 2018

Page 2

cc: T. Dean Malone (w/enclosure – *via* U.S. Mail)
Law Offices of Dean Malone
Founders Square
900 Jackson Street, Suite 730
Dallas, TX 75202

Founders Square
900 Jackson Street, Suite 730
Dallas, Texas 75202



Telephone: 214.670.9989
Fax: 214.670.9904
www.deanmalonelawfirm.com

April 19, 2018

Via CM/RRR - 92147969009997901621024147

Coryell County Sheriff's Office
ATTN: Records Clerk/Records Request
510 Leon Street
Gatesville, TX 76528

RE: Public Information Act Request (3819 FD)

Dear Coryell County Sheriff's Office:

I respectfully request, pursuant to Chapter 49 of the Texas Code of Criminal Procedure, a copy of the video recording which was State's Exhibit 2 at an inquest hearing occurring on December 19, 2017 related to the death of Kelli Leanne Page. I am willing to pay a reasonable fee for the copy.

Sincerely,



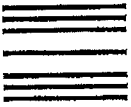
T. Dean Malone

TDM/vgl

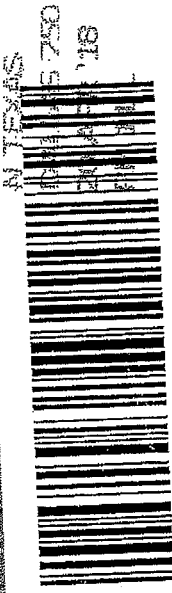
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DEAN MALONE
Founders Square, Suite 730
900 Jackson Street, Dallas Texas 75202

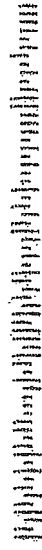
3819

CORVELL COUNTY

APR 23 2018

SHERIFF'S OFFICE

Coryell County Sheriff's Office
ATTN: Records Clerk/Records Request
510 Leon Street
Gatesville, TX 76528



76528-206299



9, 2018

Telephone: 214.670.9989
Fax: 214.670.9904
www.deanmalonelawfirm.com

819 FD)

49 of the Texas Code of Criminal Procedure, a
Exhibit 2 at an inquest hearing occurring on
Leanne Page. I am willing to pay a reasonable

Sincerely,

T. Dean Malone

MAY 09 2018

MCGINNIS LOCHRIDGE

OPEN RECORDS DIVISION

Eric A. Johnston
ejohnston@mcginnislaw.com
(512) 495-6064 o
(512) 505-6364 f

May 7, 2018

OR-718528-18
718528

The Honorable Ken Paxton
ATTORNEY GENERAL, STATE OF TEXAS
209 West 14th Street
Austin, Texas 78701
ATTN: Open Records Division

Via First Class Mail

Re: Request for Open Records Decision regarding Public Information Act Request to Coryell County Sheriff's Office from T. Dean Malone with the Law Offices of Dean Malone dated April 19, 2018, but received on April 23, 2018

Dear Attorney General Paxton:

This firm represents the Coryell County Sheriff's Office ("CCSO") in connection with the above-referenced matter. On behalf of CCSO, I respectfully submit this request for a decision from the Office of the Attorney General regarding the authority and obligation of CCSO to withhold the requested information from public disclosure. This request is submitted pursuant to the Texas Public Information Act, § 552.301 *et seq.* of the Texas Government Code (the "Act").

On April 23, 2018, CCSO received the enclosed request from T. Dean Malone with the Law Offices of Dean Malone. The information sought through this request is excepted from disclosure pursuant to the following exceptions: Sections 552.101, 552.103, 552.107, 552.108, 552.111, and 552.152 of the Government Code and Chapter 49 of the Code of Criminal Procedure.

We are providing the requestor with a copy of this correspondence in compliance with § 552.301(d) of the Act. Within five (5) business days, I will submit to your office written comments outlining the reasons why the stated exceptions apply and a copy of the requested information.

Please do not hesitate to contact my office if you have any questions regarding this matter.

Sincerely,



Eric A. Johnston, Partner

Enclosure

The Honorable Ken Paxton

May 7, 2018

Page 2

cc: T. Dean Malone (w/enclosure – *via* U.S. Mail)
Law Offices of Dean Malone
Founders Square
900 Jackson Street, Suite 730
Dallas, TX 75202

Founders Square
900 Jackson Street, Suite 730
Dallas, Texas 75202



Telephone: 214.670.9989
Fax: 214.670.9904
www.deanmalonelawfirm.com

April 19, 2018

Via CM/RRR - 92147969009997901621024147

Coryell County Sheriff's Office
ATTN: Records Clerk/Records Request
510 Leon Street
Gatesville, TX 76528

RE: Public Information Act Request (3819 FD)

Dear Coryell County Sheriff's Office:

I respectfully request, pursuant to Chapter 49 of the Texas Code of Criminal Procedure, a copy of the video recording which was State's Exhibit 2 at an inquest hearing occurring on December 19, 2017 related to the death of Kelli Leanne Page. I am willing to pay a reasonable fee for the copy.

Sincerely,

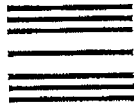
A handwritten signature in black ink, appearing to be 'T. Dean Malone', written over a horizontal line.

T. Dean Malone

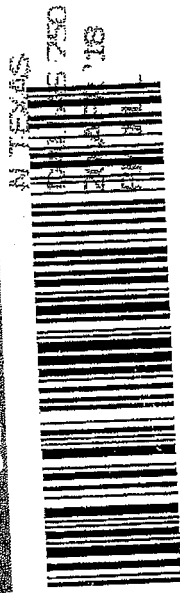
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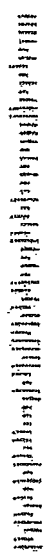
3819
—LAW OFFICES OF—
DEAN MALONE
Founders Square, Suite 730
900 Jackson Street, Dallas Texas 75202

CORVELL COUNTY

Coryell County Sheriff's Office
ATTN: Records Clerk/Records Request
510 Leon Street
Gatesville, TX 76528

APR 23 2018

SHERIFF'S OFFICE



76528-206299



9, 2018

Telephone: 214.670.9989
Fax: 214.670.9904
www.deanmalonelawfirm.com

819 FD)

49 of the Texas Code of Criminal Procedure, a
Exhibit 2 at an inquest hearing occurring on
Leanne Page. I am willing to pay a reasonable

Sincerely,

T. Dean Malone



DUSTIN H. BOYD
52nd Judicial District Attorney
Coryell County, Texas

RECEIVED

MAY 04 2018

OPEN RECORDS DIVISION

May 1, 2018

OR-717883-18
717883

The Honorable Ken Paxton
ATTORNEY GENERAL, STATE OF TEXAS
209 West 14th Street
Austin, Texas 78701
ATTN: Open Records Division

RE: Request for Open Records Decision regarding Public Information Act Request to District Attorney for Coryell County dated and received April 17, 2018, from the Law Offices of Dean Malone

Having been authorized by the District Attorney, Dustin H. Boyd to do so, I respectfully request a decision from the Office of the Attorney General regarding the authority and obligation of the District Attorney for Coryell County to withhold certain requested information from public disclosure. This request is submitted pursuant to the Texas Public Information Act, § 552.301 *et seq.* of the Texas Government Code (the "Act").

On April 17, 2018, the District Attorney of Coryell County received the enclosed request from T. Dean Malone with the Law Offices of Dean Malone via email from . Some of the information sought through this request is excepted from disclosure pursuant to the following exceptions: Sections 552.101, 552.103, 552.107, 552.108, 552.111, 552.117, 552.1175, 552.119, 552.130, 552.134, 552.137, 552.147, and 552.152 of the Government Code and Sections 1701.660 and 1701.661 of the Occupations Code.

I am providing the requestor with a copy of this correspondence in compliance with § 552.301(d) of the Act. Within five (5) business days, I will submit to your office written comments outlining the reasons why the stated exceptions apply and a copy of the requested information or a representative sample thereof.

Please contact me at our address below or via email to scott.stevens@coryellcounty.org if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Stevens", is written over the word "Sincerely,".

Scott K. Stevens
First Assistant District Attorney

Enclosure
cc: T. Dean Malone (w/enclosure)

VIA e-mail to:
and

From: Christina Rios
To: district_attorney@coryellcounty.org
Cc: Dean Malone
Subject: Public Information Act Request (3819 FD)
Date: Tuesday, April 17, 2018 1:52:06 PM
Attachments: COR-20180417-Coryell DA - PIA incident info (signed).PDF

Please see attached from Mr. Malone.

Christina M. Rios

Legal Assistant
Law Offices of Dean Malone, P.C.
900 Jackson Street, Suite 730
Dallas, Texas 75202
Phone: (214) 670-9989
Fax: (214) 670-9904

Founders Square
900 Jackson Street, Suite 730
Dallas, Texas 75202



Telephone: 214.670.9989
Fax: 214.670.9904
www.deanmalonelawfirm.com

April 17, 2018


Via Email – district_attorney@coryellcounty.org

Coryell County District Attorney's Office
ATTN: Open Records
Coryell County Gatesville Annex
P.O. Box 919
201 South 7th St.
Gatesville, TX 76528

RE: Public Information Act Request (3819 FD)

Dear Coryell County District Attorney:

Please provide copies of all documents, audio recordings, and video recordings evidencing, referencing, or relating to the death of Kelli Leanne Page occurring on October 8, 2017 in Coryell County, Texas. Thank you for your assistance.

Sincerely,

T. Dean Malone

TDM/vgl



May 8, 2018

DUSTIN H. BOYD
52nd Judicial District Attorney
Coryell County, Texas

RECEIVED

MAY 09 2018

OPEN RECORDS DIVISION

717883
718216

The Honorable Ken Paxton
ATTORNEY GENERAL, STATE OF TEXAS
P.O. Box 12548
Austin, TX 78711-2548
ATTN: Open Records Division

Dear Attorney General Paxton,

On April 17, 2018, the District Attorney for Coryell County received the enclosed request from T. Dean Malone with the Law Offices of Dean Malone. The Request is attached hereto as Exhibit 1. On May 1, 2018, the District Attorney for Coryell County timely requested an Open Records Decision from your Office concerning matters responsive to the Request. Attached as Exhibit 2 is a copy of our letter requesting an opinion, which was also served on the Requestor. This letter-brief constitutes the comments required under Tex. Gov't Code § 552.301(e) and is submitted within fifteen (15) business days of our receipt of the Request.

The responsive documents¹ are attached hereto for your review, with the excepted material highlighted, as Exhibits 3-5. Exhibit 6 is presented to show certain exceptions existed at the time of the Request.

Background Information

On October 8, 2017 Kellie Leanne Page died while in custody in the Coryell County Jail. The death of Ms. Page was investigated by Texas Ranger Adam Russell to determine whether her death was the result of an unlawful act for which criminal charges could be sought. The District Attorney requested a Coroner's Inquest be held to inquire into the death of Ms. Page. As Coryell County has no medical examiner or coroner, the inquest was held by Coy Latham, Justice of the Peace, Precinct Four, of Coryell County, Texas.

At the inquest, Judge Latham ruled the death of Ms. Page was not the result of any unlawful conduct.

¹ Due to the excessive volume of documents that are potentially responsive, pursuant to Section 552.301(e) of the Act, CCSO is providing a representative sampling of responsive documents that contain information or materials excepted from the Act. All documents referred to as being attached are included on a disc in Adobe portable document format (pdf). Video recordings are in the format in which they were provided from their source. In every exhibit, exceptions applying to the entire document appear at a header on each page, unless otherwise indicated below.

ARGUMENT AND AUTHORITIES

The request for disclosure seeks information excepted from disclosure. The District Attorney is withholding responsive documents because they contain information that is excepted from disclosure pursuant to the following exceptions: Sections 552.101, 552.102, 552.103, 552.108, 552.117, 552.1175, 552.130, and 552.147 of the Government Code.

The Requested Material Contains Information that is Excepted from Disclosure by Section 552.101 of the Act.

Dates of Birth: Common-Law

In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the Supreme Court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.--Austin May 22, 2015, pet. denied) (mem. op.). The Supreme Court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure. *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. The materials contain information protected by common-law privacy, including but not limited to, private citizens' dates of birth, which should be excepted from disclosure.

552.101-Embarrassing Information in Medical Records

Additionally, your office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). The responsive documents contain medical information that should be withheld as there is no legitimate public concern served by the release of this information.

A representative sampling of such records, with excepted information noted, are labeled and attached hereto as Exhibit 3.

552.101-Medical Records-Chapter 159, Tex. Occ. Code

Further, the medical records of Ms. Page are protected from disclosure under Tex. Occ. Code § 159.002. They are precisely the type of record designated by Tex. Occ. Code §§ 159.002(f)(2) and 159.0033(a)(10). The records were obtained by the District Attorney's Office by a grand jury subpoena from Coryell Memorial Hospital. Tex. Occ. Code § 159.002(f)(2). Grand Juries are convened for the investigation of possible criminal behavior. Tex. Code Crim. Proc. art. 20.09. Grand Juries, acting through the State's Attorney or the Grand Jury Foreperson, are authorized to

use subpoenas² to obtain the attendance of witnesses. Tex. Code Crim. Proc. arts. 20.10-20.15. However, Tex. Occ. Code § 159.002(c) prohibits the release of the information for a purpose other than the one for which it was originally released by the physician. Release of information to an apparently unrelated third-party is not the purpose for which the records were released to the Grand Jury by Coryell Memorial Hospital. They were to be used to determine if any criminal offense occurred relating to Ms. Page's death. These records were not exhibits used in the Inquest.

Medical records obtained by grand jury subpoena are included in their entirety in Exhibit 4 and are not individually labeled but are all confidential under Chapter 159 of the Texas Occupations Code. *See* ORD 598, ORD 487; and *See* ORL 2011-05218.

The Requested Material Contains Information that is Excepted from Disclosure by Section 552.102 of the Act.

The Supreme Court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure. Texas Comptroller, 354 S.W.3d at 347-48. The responsive material contains dates of birth of public employees and are therefore excepted from disclosure.

A representative sampling of such records, with excepted information noted, are labeled and attached hereto as Exhibit 3. Items labeled as being excepted by 552.1175 should also be treated as labeled for 552.102, as all of the public employees whose personal information appears in the responsive documents are also covered by 552.1175 in this instance.

The Requested Materials Contain Information that is Excepted from Disclosure by Section 552.103 of the Act.

Section 552.103, commonly referred to as the litigation exception, excepts from disclosure "information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party." *See* TEX. GOV'T CODE § 552.103(a). Further, the litigation exception instructs that information is excepted "only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information." *See* TEX. GOV'T CODE § 552.103(c). The District Attorney is withholding information that relates to pending and/or reasonably anticipated litigation.

Section 552.103(a) of the Act was intended to prevent the use of the Act as a method of avoiding the rules of discovery used in litigation. *Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App.--Austin 2002, no pet.). This exception enables a government to protect its position in litigation "by forcing parties seeking information relating to that litigation to obtain it through discovery, if at

² Though the term "summons" is used, a grand jury subpoena is sufficient to be considered a summons under Tex. Code Crim. Proc. art. 20.10. *See Jacques v. State*, No. 06-05-00244-CR, 2006 Tex. App. LEXIS 10430 at *8 (Tex. App.—Texarkana 2006, no pet.) (not designated for publication) (concluding that a grand jury subpoena is a summons under art. 20.10 and justified release of medical information under Federal regulations, *See* 45 C.F.R. § 164.512(f)(1)(ii)(B)).

all.” Tex. Att’y Gen. ORD-551, at 3 (1990) (emphasis added). The Attorney General has stated, “[w]e do not believe that the [Act] was intended to provide parties involved in litigation any earlier or greater access to information that was already available in such litigation.” Id.

It is also instructive to consider standards for exception from release of documents under the federal Freedom of Information Act (“FOIA”). *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360-61 (Tex. 2000) (plurality op.) (FOIA is instructive in construing the Texas Public Information Act). The U.S. Supreme Court has made clear that FOIA was not enacted for the benefit of private litigants. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 143 n. 10 (1975); *Fenster v. Brown*, 617 F.2d 740, 743-44 (D.C. Cir. 1979) (“The [FOIA] was fundamentally designed to inform the public not to benefit private litigants.”).

Information may be withheld under Section 552.103 of the Act if the governmental body establishes that: (1) litigation is pending or reasonably anticipated on the date of the request, and (2) the information requested is related to the pending litigation. *Univ. Tex. Law School v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.). The definition of “reasonably anticipated” is fact specific and takes into account the surrounding circumstances of each situation. Id. There is no requirement that the individual requesting information be a party to the litigation, just that the information requested is related to litigation/pending litigation. Tex. Att’y Gen. ORD-551, at 4; Tex. Att’y Gen. ORD-647 (1996).

Prior to the time of the Request, the Texas Rangers conducted an investigation into the incident that is the subject of the Request. Therefore, the responsive material contains information of a potential criminal nature to which the State of Texas would be a party. Moreover, the family of Kelli Leanne Page has made statements alluding to a civil lawsuit. Further, the Requestor is a personal injury attorney, T. Dean “Dean” Malone of Law Offices of Dean Malone, P. C. Mr. Malone, on the Police Abuse Blog contained in his firm’s website, holds himself out as “Police and Jailer Misconduct Lawyer.” The following excerpt begins his Police Abuse Blog:

Attorneys Representing Police and Jailer Misconduct Victims

This website is maintained by the Law Offices of Dean Malone, P.C., a Dallas, Texas law firm representing people across Texas for police and jailer misconduct injury cases. We have attempted to provide useful information for those harmed by police misconduct[sic].³

Thus, the District Attorney concludes that there is a reasonable anticipation that litigation is about to ensue. To illustrate that the conditions were the same at the time of the Request, a printout from the “Police Abuse Blog” is included showing many entries on the blog continuing for at least a year prior to the request.

Additionally, in two meetings with the District Attorney and family members of Ms. Page, one prior to the Inquest and one immediately after, members of the family repeatedly insisted that

³ <http://police-misconduct-lawyer-texas.com/blog/> as accessed May 1, 2018 from the home page of the Law Offices of Dean Malone, <http://deanmalonelawfirm.com/>, through the Police Abuse Blog tab. A printout of the blog is attached as Exhibit 6

cardio-pulmonary resuscitation, (CPR) was not done by the correct method and was done intermittently rather than continuously. Two of the family members present were Ms. Page's parents. Ms Page's parents are in the class of individuals who have the right bring a wrongful death suit. Tex. Civ. Prac. & Rem. Code § 71.021

Accordingly, the responsive materials should all be withheld.

While all of the samples submitted in Exhibit 3 are representative of items that apply under this exception, an additional representative sampling of records not appearing in Exhibit 3 are labeled and attached hereto as Exhibit 4⁴.

**The Requested Documents Contain Information that is Excepted from Disclosure by
Section
552.108(a)(2) and 552.108(b)(2) of the Act.**

Section 552.108 (a)(2) excepts from disclosure the following:

Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (2) it is information that deals with the detection, investigation, or prosecution of a crime only in relation to an investigation that did not result in conviction or deferred adjudication . . .

Additionally, Section 552.108(b)(2) excepts the following:

An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matter relating to law enforcement or prosecution
. . . if: (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication. . .

The requested information includes documentation of the death of Keili Leanne Page, which was investigated by the Coryell County District Attorney for the purposes of potential criminal prosecution. All of the responsive information was gathered, examined and/or used by the Texas Rangers or the District Attorney in the course of the investigation of the death of Ms. Page. The investigation did not result in conviction or deferred adjudication. Accordingly, all information is excepted from disclosure under Section 552.108.

⁴ Included in Exhibit 4 are all video recordings included on the disc, which are labelled only by their inclusion in the folder named Exhibit 4 on the disc. Further labeling was impractical due to difficulty in trying to edit the recordings to include labels. The proprietary player provided by the Coryell County Sheriff's Office is included in the folder containing recordings. The file entitled "Play.exe" is the player. When opened, a small, downward-pointing triangle located in the upper right portion of the player window will open the file list for selecting files to play. The viewer must choose the "Open" option on the drop-down menu to the file selection window. Then successive folders must be opened on the disc until reaching the folder in which the files and the player are stored to select the files to be played. Each file has varying lengths of video and highlighting all the files ending in the extension ".dav" will allow the player to play them in succession without having to open each file individually.

Three pending cases were dismissed as a result of the death of Ms. Page, Exhibit 4 consists of the entire offense report in possession of the District Attorney's Office on each case. Marks exist for data that applies under other exceptions that are identified in other Exhibits. The pages in Exhibit 4, along with the entire file possessed by the District Attorney qualifies for the exception claimed under 552.103, with the possible exception of those held on behalf of the grand jury set out in Exhibit 5.

The Requested Materials Contain Information that is Excepted from Disclosure by Section 552.1175 of the Act.

Section 552.1175 of the Act excepts from disclosure certain personal information of peace officers, county jailers and justices of the peace if the individual chooses to restrict public access to the information. Section 552.1175 excepts from public disclosure a listed person's home address, home telephone number, date of birth, and social security number. Social security numbers are specifically exempted

A representative sampling of such records, with excepted information noted, are labeled and attached hereto as Exhibit 3. Any portions labeled as excepted under Section 552.1175 that includes a social security number is intended to be considered under Section 552.147 as well whether explicitly labeled under either section.

The Requested Materials Contain Information that is Excepted from Disclosure by Section 552.130 of the Act.

Section 552.130 excepts from disclosure certain motor vehicle records, including driver's license information. The documents contain drivers' license numbers and should be excepted from disclosure.

A representative sample of such records, with excepted information noted, are labeled and attached hereto as Exhibit 3.

The Requested Materials Contain Information that is Excepted from Disclosure by Section 552.147 of the Act.

Section 552.147 of the Act excepts from disclosure "the social security number of a living person." The responsive documents contain social security numbers of living persons.

A representative sampling of such records, with excepted information noted, are labeled and attached hereto as Exhibit 3.

552.003 & 552.0035-Records Held by the District Attorney on Behalf of the Judiciary

Some of the records held by the District Attorney are held on behalf of the grand jury of the 440th District Court. Those records consist of the medical records discussed above as having been produced pursuant to a grand jury subpoena. As such, those records are not subject to the Public Information Act. Unlike records that are developed by other means for presentation to the grand

jury, these medical records consist of records gathered by the grand jury itself for use in its investigation. Tex. Gov't Code § 552.0035 *See* Tex. Gov't Code § 552.003(1)(B) (stating that a governmental body under the public information act does not include the judiciary); *State v. Ford*, 179 S.W.3d 117 (Tex.—App. San Antonio 2005, no pet.) (in deciding whether certain information was prohibited from disclosure for purposes of Tex. Penal Code §39.06, finding that records of the grand jury judicial information and not subject to the Public Information Act)

SUMMARY OF EXHIBITS

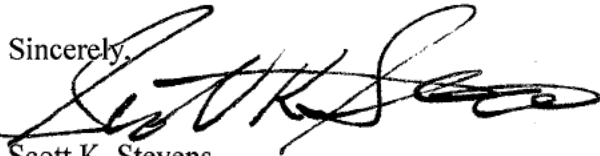
Accompanying the exhibits on the disc is a table of exhibits and the exceptions that apply to each exhibit as described above.

CONCLUSION

For the reasons set forth above, the District Attorney asserts that the information requested by T. Dean Malone is excepted from disclosure under the Texas Public Information Act.

Thank you for your consideration. Please contact me at our address below or via email to scott.stevens@coryellcounty.org if you have any questions.

Sincerely,



Scott K. Stevens
First Assistant District Attorney

Enclosure

cc: T. Dean Malone (w/enclosure)

VIA e-mail to:
and